



## COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

<b>COUNCIL MEMBERS</b>	<b>REDEVELOPMENT AGENCY</b>
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Steve Tate, Mayor Pro Tempore	Steve Tate, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Mark Grzan, Council Member	Mark Grzan, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member

**WEDNESDAY, OCTOBER 19, 2005**

**AGENDA**

**JOINT MEETING**

**CITY COUNCIL SPECIAL AND REGULAR MEETING**

**and**

**REDEVELOPMENT AGENCY SPECIAL MEETING**

**6:00 P.M.**

*A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions and 7:00 P.M. for Redevelopment Agency Business.*

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**Dennis Kennedy, Mayor/Chairman**

**CALL TO ORDER**

(Mayor/Chairperson Kennedy)

**ROLL CALL ATTENDANCE**

(City Clerk/Agency Secretary Torrez)

**DECLARATION OF POSTING OF AGENDA**

**Per Government Code 54954.2**

(City Clerk/Agency Secretary Torrez)

**6:00 P.M.**

## ***City Council Action and Redevelopment Agency Action***

### **CLOSED SESSION:**

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 3

**2.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code Section 54956.8  
Property: 1505 Fieldshire Way, APN: 728-15-001  
Agency Negotiators: Agency Director, Interim Agency Counsel, Director of Business Assistance & Housing Services  
Parties: Lisa I. Corona  
Under Negotiation: Price, Terms of Payment

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**

### **RECONVENE**

### **CLOSED SESSION ANNOUNCEMENT**

**7:00 P.M.**

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **RECOGNITIONS**

Act of Heroism  
*David Ward*

Act of Heroism  
*Michelle May*

Award of Accreditation from the Commission of Fire Accreditation International  
*Chief Ben Lopes*

### **CITY COUNCIL REPORT**

Council Member Grzan

### **CITY COUNCIL SUB-COMMITTEE REPORTS**

### **CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

**OTHER REPORTS**

**PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND  
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE  
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY  
COUNCIL/REDEVELOPMENT AGENCY.**

***City Council Action***

**CONSENT CALENDAR:**

**ITEMS 1-18**

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

**Time Estimate**

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**Consent Calendar: 1 - 10 Minutes**

1. **INDOOR RECREATION CENTER PROJECT – SEPTEMBER CONSTRUCTION PROGRESS REPORT** ..... 9  
**Recommended Action(s): Information** Only.
2. **DOWNTOWN TRAFFIC CALMING – THREE MONTH REVIEW AFTER JUNE 2005 INITIAL INSTALLATION** ..... 10  
**Recommended Action(s): Information** Only, At This Time.
3. **THIRD AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT** ..... 11  
**Recommended Action(s): Authorize** the City Manager to Execute a Third Amendment to the Agreement with the Law Firm of Hatch & Parent.
4. **SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF PRESTON, GATES & ELLIS, LLP** ..... 12  
**Recommended Action(s): Authorize** the City Manager to Execute a Second Amended Agreement with the Law Firm of Preston, Gates & Ellis, LLP.
5. **APPROVAL OF PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY** ..... 13  
**Recommended Action(s): Approve** Payment in the Amount of \$33,847.19 for Vegetation Abatement.

**Time Estimate**

**Page**

**Consent Calendar: 1 - 10 Minutes**

6. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9617, CAPRIANO PHASE VI** ..... 14  
**Recommended Action(s):**  
  1. **Adopt** the Resolution Accepting the Subdivision Improvements Included in Tract 9617, Commonly Known as Capriano Phase VI; and
  2. **Direct** the City Clerk to File a Notice of Completion with the County Recorder's Office.
  
7. **FINAL MAP APPROVAL FOR THE RANCH AT ALICANTE (TRACT 9716)** ..... 17  
**Recommended Action(s):**  
  1. **Approve** the Final Map, Subdivision Agreement and Improvement Plans;
  2. **Authorize** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and
  3. **Authorize** the Recordation of the Map and the Subdivision Improvement Agreement, Following Recordation of the Development Improvement Agreement.
  
8. **PUBLIC WORKS ASPHALT MAINTENANCE AGREEMENT FOR FISCAL YEAR 2005-2006** ..... 18  
**Recommended Action(s):**  
  1. **Approve** New Maintenance Agreement for Annual Miscellaneous Pavement Repair Services; and
  2. **Authorize** the City Manager to Execute the Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.
  
9. **WILDLIFE TRAIL DESIGN CONTRACT** ..... 19  
**Recommended Action(s):** **Authorize** the City Manager to Execute an Agreement with Bellinger Foster Steinmetz, in an Amount not to exceed \$40,450, for the Development of Construction Documents and Construction Oversight for the Morgan Hill Wildlife Trail; Subject to Review and Approval by the City Attorney.
  
10. **AWARD OF DEPOT STREET SEWER REPLACEMENT PROJECT** ..... 21  
**Recommended Action(s):**  
  1. **Award** Contract to D'Arcy & Harty Construction, Inc. for the Construction of the Depot Street Sewer Replacement Project in the Amount of \$382,940; Subject to Review and Approval by the City Attorney;
  2. **Authorize** the Expenditure of Construction Contingency Funds not to Exceed \$38,294; and
  3. **Appropriate** \$117,000 From the Unappropriated Sanitary Sewer Rehabilitation Fund (643).
  
11. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR SEWER INFILTRATION INVESTIGATION IN THE ATHERTON AREA** ..... 22  
**Recommended Action(s):** **Authorize** the City Manager to Execute a Consultant Agreement with V&A Consulting Engineers, Inc. for Sewer Infiltration Investigation in the Atherton Area in the Amount of \$28,600; Subject to Review and Approval by the City Attorney.
  
12. **ESTABLISH NEW CLASSIFICATION AND SALARY RANGES** ..... 25  
**Recommended Action(s):**  
  1. **Adopt** the New Job Description and Salary Range for the Position of Public Safety Dispatcher Supervisor;
  2. **Abolish** the Lead Public Safety Dispatcher Position;
  3. **Reclassify** and **Establish** New Salary Range for Property/Evidence Technician;
  4. **Change** Title of Police Lieutenant to Police Commander;
  5. **Establish** Salary Range for Special Assignments for Senior Planner Position; and
  6. **Reclassify** Vacant Associate Planner Position to Senior Planner Position.

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
13.	<b><u>PURCHASE OF POLICE VEHICLES</u></b> .....	26
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Authorize</u></b> the Purchase of Four (4) Vehicles from The Ford Store through reliance upon the Competitive Bid Process by the City of Gilroy, for a Total Cost of \$91,069.85; and	
	2. <b><u>Declare</u></b> Four (4) Vehicles being replaced as Surplus and <b><u>Authorize</u></b> the Sale of these Vehicles at Auction.	
14.	<b><u>REPLACEMENT PURCHASE OF A POLICE VEHICLE</u></b> .....	29
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Authorize</u></b> the Vehicle Purchase and Police Equipment Build Out through The Ford Store Morgan Hill for the Vehicle Identified in the Staff Report for a Total Cost of \$23,517.70; and	
	2. <b><u>Approve</u></b> a \$13,518.00 Budget Increase in the Equipment Replacement Fund for the Portion of the Replacement Cost over the Insurance Deductible that will be Financed with the Insurance Proceeds or other Reimbursements.	
15.	<b><u>FINDINGS FOR BUILDING PERMIT FEES CHARGED FOR INSTALLATION OF A SOLAR – ELECTRIC PHOTOVOLTAIC ROOF SYSTEM</u></b> .....	32
	<b><u>Recommended Action(s): Take No Action;</u></b> Information Only.	
16.	<b><u>ADOPT ORDINANCE NO. 1740, NEW SERIES</u></b> .....	36
	<b><u>Recommended Action(s): Waive</u></b> the Reading, and <b><u>Adopt</u></b> Ordinance No. 1740, New Series, and <b><u>Declare</u></b> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL, R-2 (3500) RESIDENTIAL AND CG, GENERAL COMMERCIAL TO CC-R, CENTRAL COMMERCIAL/RESIDENTIAL FOR TWENTY NINE PARCELS TOTALING 13.25 ACRES LOCATED AT THE SOUTHEAST CORNER OF EAST DUNNE AVENUE AND CHURCH STREET AND SOUTH SIDE OF EAST OF DUNNE AVENUE BETWEEN MONTEREY ROAD AND CHURCH STREET NORTH OF BISCEGLIA AVENUE. (APNS 817-01-018 thru 022, 026, 031 thru 039, 045, 046, 050, 051, 053 thru 057, 059 thru 064).</b>	
17.	<b><u>APPROVE SPECIAL CITY COUNCIL MINUTES OF SEPTEMBER 30, 2005 MEETING</u></b> .....	40
18.	<b><u>APPROVE JOINT REGULAR AND SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF OCTOBER 5, 2005</u></b> .....	41

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

#### **ITEMS 19-21**

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
19.	<b><u>SALE OF BELOW MARKET RATE (BMR) HOME LOCATED AT 324 VIA NAVONA</u></b> .....	64
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Authorize</u></b> use of up to \$20,000 to Complete any Necessary Repairs for this BMR Unit; and	
	2. <b><u>Authorize</u></b> Staff to Sell this BMR Unit to a Median Income BMR Buyer at the Established Median Income BMR Home Price.	

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
20.	<b><u>LOAN TO COMMUNITY SOLUTIONS FOR THE REHABILITATION OF THE LA CASA DEL PUENTE TRANSITIONAL SHELTER FOR THE MENTALLY DISABLED</u></b> ..... <b>65</b>	
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Approve</u></b> a Loan of up to \$102,000 under the Redevelopment Agency's Housing Rehabilitation Loan Program to Community Solutions; and	
	2. <b><u>Authorize</u></b> the Executive Director to do Everything Necessary to Prepare and Execute Loan Documents.	
21.	<b><u>AUTHORIZATION TO APPLY FOR AND ACCEPT A CALIFORNIA HOUSING FINANCE AGENCY (CalHFA) HELP LOAN FOR HOUSING PROJECTS</u></b> ..... <b>66</b>	
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Adopt</u></b> the Resolution Authorizing the Executive Director to Apply to the California Housing Finance Agency (CalHFA) "HELP" Program for a Loan of up to \$1 Million Dollars; and	
	2. <b><u>Authorize</u></b> the Executive Director to do Everything Necessary to Accept and Execute the Loan with CalHFA, if Awarded.	

## *City Council Action (Continued)*

### **CONSENT CALENDAR:**

#### **ITEMS 22**

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
22.	<b><u>ADOPT ORDINANCE NO. 1739, NEW SERIES</u></b> ..... <b>68</b>	
	<b><u>Recommended Action(s):</u></b> <b><u>Waive</u></b> the Reading, and <b><u>Adopt</u></b> Ordinance No. 1739, New Series, and <b><u>Declare</u></b> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.87 ACRES FROM COUNTY OF SANTA CLARA AGRICULTURAL ZONING (A-20) TO PLANNED UNIT DEVELOPMENT (PUD) ZA-05-10: CONDIT-KUBO (APN 728-17-011, -024, -025).</b>	

## *City Council Action*

### **PUBLIC HEARINGS:**

	<b>Time Estimate</b>	<b>Page</b>
23.	<b>5 Minutes</b>	
	<b><u>ZONING AMENDMENT, ZA-05-06: CITY OF MORGAN HILL-MAST STREET PLANNED UNIT DEVELOPMENT (PUD) DISTRICT AMENDMENT</u></b> ..... <b>81</b>	
	Public Hearing Opened.	
	Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
	Council Discussion.	
	Action- <b><u>Motion to Waive</u></b> the Reading in Full of Ordinance Approving PUD.	
	Action- <b><u>Motion to Introduce</u></b> Ordinance by Title Only. (Roll Call Vote)	

**PUBLIC HEARINGS:**

	<b>Time Estimate</b>		<b>Page</b>
24.	5 Minutes	<b><u>DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-07: MONTEREY-SOUTH COUNTY HOUSING (ROYAL COURT)</u></b> .....	85
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <b><u>Motion to Waive</u></b> the Reading in Full of Ordinance Amending Development Agreement.	
		Action- <b><u>Motion to Introduce</u></b> Ordinance by Title Only. (Roll Call Vote)	
25.	5 Minutes	<b><u>APPLICATION ZA-05-08: AMENDING THE ZONING CODE LOT DEFINITION AND PARKING CODE STANDARD ON TANDEM PARKING</u></b> .....	89
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <b><u>Motion to Waive</u></b> the Reading in Full of Ordinance Amending Municipal Code.	
		Action- <b><u>Motion to Introduce</u></b> Ordinance by Title Only. (Roll Call Vote)	
26.	15 Minutes	<b><u>ZONING AMENDMENT, ZA-05-11: CITY OF MORGAN HILL – ESTABLISHING PROVISIONS FOR DOWNTOWN ADMINISTRATIVE USE PERMITS</u></b> .....	92
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <b><u>Motion to Waive</u></b> the Reading in Full of Ordinance Amending Chapter 18 of the Municipal Code.	
		Action- <b><u>Motion to Introduce</u></b> Ordinance by Title Only. (Roll Call Vote)	
		Action- <b><u>Provide Direction</u></b> on Further Ordinance Amendments.	

## *City Council Action*

**OTHER BUSINESS:**

	<b>Time Estimate</b>		<b>Page</b>
27.	10 Minutes	<b><u>REQUEST FOR ENDORSEMENT OF PROPOSITION 77 – REDISTRICTING INITIATIVE CONSTITUTIONAL AMENDMENT</u></b> .....	99
		<b><u>Recommended Action(s): Consider</u></b> Request for Endorsement of Proposition 77.	

**OTHER BUSINESS:**

	<b>Time Estimate</b>		<b>Page</b>
28.	15 Minutes	<b><u>CONSIDER PROPOSED TEXT AMENDMENTS TO TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE MORGAN HILL MUNICIPAL CODE</u></b> <b><u>Recommended Action(s):</u></b> <ol style="list-style-type: none"> <li>1. <b><u>Consider</u></b> Proposed Text Amendments to Title 2, Chapters 2.22 (Master Provisions for Boards &amp; Commissions), 2.28 (Health Commission), 2.32 (Parks &amp; Recreation Commission), 2.56 (Architectural &amp; Site Review Board), 2.64 (Mobile Home Rent Commission), and 2.68 (Library, Culture &amp; Arts Commission); and Addition of Chapter 2.70 (Senior Advisory Commission) to the Morgan Hill Municipal Code;</li> <li>2. <b><u>Provide</u></b> Staff Direction with any Recommended Changes to the Draft Ordinance;</li> <li>3. <b><u>Request</u></b> Comments from the Affected Commissions; and</li> <li>4. <b><u>Direct</u></b> Staff to Return with an Ordinance, Incorporating Amendments to the Municipal Code as it Relates to City Council Appointed Boards and Commissions.</li> </ol>	100

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

**ADJOURNMENT**





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **INDOOR RECREATION CENTER PROJECT – SEPTEMBER CONSTRUCTION PROGRESS REPORT**

**RECOMMENDED ACTION(S):** *Information Only*

#### **EXECUTIVE SUMMARY:**

Previous Council action awarded the contract for construction of the Indoor Recreation Center Project to West Coast Contractors, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of September. This report has been sent to our webmaster for posting on the City's website. Current construction activity can be viewed live on the internet at [www.novapartners.com/mhirc](http://www.novapartners.com/mhirc).

The contractor continues to make good progress on the masonry block wall installation. The gymnasium is more than 75% complete and the locker rooms are over 95% complete. Most of the site concrete curbs are in place and baserock is expected shortly. This will enable West Coast Contractors to "winterize" the site. Barring any unforeseen circumstances, the anticipated Grand Opening is September 5, 2006. The project is currently on schedule and within budget.

**FISCAL/RESOURCE IMPACT:** None

**Agenda Item # 1**

**Prepared By:**

**Sr. Project Manager**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **DOWNTOWN TRAFFIC CALMING –THREE MONTH REVIEW AFTER JUNE, 2005 INITIAL INSTALLATION**

**RECOMMENDED ACTION(S):** For information only at this time

**Agenda Item # 2**

**Prepared By:**

**Deputy Public Works**

**Public Works Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** At its January 26, 2005 meeting, the Council considered various traffic calming options for Monterey Road in the downtown area and directed staff to implement four measures. Those measures have been implemented at a total cost of approximately \$50,000 (originally estimated at \$75,000) and are described as follows. 1) Narrowing of traffic lanes from 12' to 10.5' wide, 2) Painting high-visibility bars on the unsignalized First and Third Street crosswalks, 3) Installing speed cushions at Third Street, and 4) Planting of median trees both north and south of the Monterey/Fourth Street intersection. Roughly three months since these measures were implemented; staff is reporting on early findings of effectiveness of these measures.

A speed and volume survey (highlights attached) was recently prepared by Higgins and Associates, a traffic engineering firm, for Monterey Road in the downtown area to compare with a similar survey completed in June of 2005 so that the effectiveness of the traffic calming measures could be analyzed. The results of this before-and-after survey suggest that vehicle speeds and traffic volumes have remained essentially unchanged; however, the speed cushions have caused localized speeds at the Third Street intersection to drop significantly. The 85<sup>th</sup> percentile speed limit along Monterey in the downtown area from the June 2005 survey was 32 MPH northbound and 33 MPH southbound. In the recent survey, during mid-September, those numbers were the same at locations more than 500 feet from the speed cushions. The seven-day average daily traffic volume for both directions of Monterey Road was measured in June at 9,491 northbound daily vehicles and 9,786 southbound. In October, the numbers were 9,832 northbound and 9,641 southbound. The analysis does show that speeds at the Third Street pedestrian crossing slow to near 15 MPH or lower. This is corroborated by field observations.

Since the installation of the speed cushions at Third Street there have been four reported accidents with three of them the result of rear-end collisions. No significant injuries have been reported. The fourth was a single vehicle incident where a trailer loaded with equipment was dislodged from the hitch on the pick-up that was towing it. One claim has been filed with the City Clerk's office; that being for the truck and trailer incident.

Staff has also been keeping records of public input regarding the speed cushion since their installation on June 13, 2005, mainly from emails and phone calls, but also from the citizen surveys completed by City staff at the Taste of Morgan Hill this past month. To date, we have had 7 individuals contact the City in support of the speed cushions, and 24 who have requested they be removed. Also, to our knowledge, both the Downtown Association and the Chamber remain in support of the cushions.

Staff will be further monitoring the speed cushions for another three months to better evaluate their effectiveness. While it has been demonstrated that the cushions substantially reduce the speeds at the Third Street pedestrian crossing, the number of traffic accidents is a concern. Staff will return to the Council with another report in three months.

**FISCAL/RESOURCE IMPACT:** None at this time.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 19, 2005***

**Agenda Item # 3**

**Submitted By:**

**City Manager**

### **THIRD AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT**

#### **RECOMMENDED ACTIONS:**

Authorize the City Manager to execute a Third Amendment to Agreement with the law firm of Hatch & Parent.

#### **EXECUTIVE SUMMARY:**

On May 21, 2002, the City contracted with the law firm of Hatch & Parent to provide the City with legal services in connection with the perchlorate land and water contamination. On September 15, 2004, Council approved a contract with Hatch & Parent in the amount of \$100,000. Pursuant to Council approval on March 16, the contract was increased by \$150,000 to \$250,000. As this matter is ongoing, staff is recommending that Council approve the attached Third Amendment to Agreement to increase the amount by an additional \$75,000 to \$325,000 to cover Hatch & Parent's continuing representation of the City's interests, as well as ongoing work by experts on this matter, through December 31, 2005.

#### **FISCAL IMPACT**

There are sufficient funds available in the Water Operations fund (650.5710.42230) to cover the requested contract amendment.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 19, 2005***

### **TITLE: SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF PRESTON GATES & ELLIS, LLP**

**Agenda Item # 4**

**Prepared By:**

\_\_\_\_\_  
**(Title)**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

### **RECOMMENDED ACTIONS:**

Authorize the City Manager to execute a Second Amended Agreement with the law firm of Preston, Gates & Ellis, LLP.

### **EXECUTIVE SUMMARY:**

On May 26, 2005, the City entered into a contract in the amount of \$10,000 with the law firm of Preston, Gates & Ellis, LLP, to handle transactional matters relating to real property negotiations and acquisitions, eminent domain, inverse condemnation and other related activities in connection with Capital Improvement Projects. In that regard, two Complaints in Eminent Domain were filed in the Santa Clara County Superior Court. One matter settled by means of negotiated settlement. The remaining matter was referred to mediation. On September 8, 2005, the contract was amended by an additional \$10,000 to cover the fees and costs incurred for discovery, retention of an expert witness and mediation. Following the mediation, the parties entered into a Stipulation for Settlement. The current contract in the amount of \$20,000 is insufficient to cover all the fees and expenses necessitated by the mediation and for the preparation of the closing documents and finalizing the settlement. Therefore, staff is recommending that Council approve the attached Second Amendment to Agreement increasing the contract amount by an additional \$15,000 to \$35,000. This amount should be sufficient to cover the anticipated fees and costs associated with concluding the eminent domain actions.

### **FISCAL IMPACT:**

The cost of this Second Amendment to Agreement can be accommodated in the CIP budget. No additional appropriation is necessary at this time.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 19, 2005***

### **APPROVAL OF PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY**

**RECOMMENDED ACTION(S):** Approve payment in the amount of \$33,847.19 for vegetation abatement.

**EXECUTIVE SUMMARY:** This payment is pursuant to our contract with the County Fire Marshall for hazardous vegetation abatement on City owned property. The work performed by the County includes discing and handwork on the City's open space and Assessment District properties. There are approximately 292 acres which require abatement. Per our agreement, the charges for these services include a reduced administrative fee of 75% of the cost of the contractor.

This past year the County went out for bid and has a new contractor. Work performed by the contractor met the Fire Marshall's standards and the invoice reflects the lower rates.

**FISCAL IMPACT:** Funds are appropriated in the Parks Maintenance and Landscape & Lighting budgets for the abatement of vegetation on City owned parcels.

**Agenda Item #5**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: October 19, 2005***

**ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR  
TRACT 9617, CAPRIANO PH. VI**

**RECOMMENDED ACTION(S):**

1. Adopt the attached resolution accepting the subdivision improvements included in Tract 9617, commonly known as Capriano Ph. VI.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

**EXECUTIVE SUMMARY:**

Tract 9617 is a 24 lot subdivision located on the southeast corner of Tilton Avenue and Dougherty Avenue (see attached location map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvement Agreement between the City of Morgan Hill and Glenrock Builders, Inc., dated November 9, 2004 and as specifically set forth in the plans and specifications approved by the City.

The streets to be accepted are:

<u>Street Name</u>	<u>Street Length</u>
Coriander Avenue	0.15 miles
Fennel Court	0.09 miles
Saffron Drive	0.20 miles

The value of the public improvements being accepted is \$939,576.

**FISCAL IMPACT:** Staff time for this project was paid for by development fees.

**Agenda Item # 6**

**Prepared By:**

\_\_\_\_\_  
**Senior Engineer**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL ACCEPTING THE SUBDIVISION  
IMPROVEMENTS FOR TRACT 9617, CAPRIANO PH. VI**

**WHEREAS**, the owner of Tract 9617, designated as Capriano Ph. VI, entered into a Subdivision Improvement Agreement on November 9, 2004 and

**WHEREAS**, Jim Ashcraft, City Engineer, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said subdivision.

**NOW, THEREFORE**, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Subdivision Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions referred to in Paragraph 10 of the Subdivision Improvement Agreement of November 9, 2004.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the subdivision public improvements.
4. If requested by the developer or subdivider, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

**PASSED AND ADOPTED** this 19<sup>th</sup> day of October, 2005.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

**CERTIFICATION**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at the Regular City Council Meeting of October 19, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ**, City Clerk

Record at the request of  
and when recorded mail to:

CITY OF MORGAN HILL  
CITY CLERK  
17555 Peak Avenue  
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION

CITY OF MORGAN HILL

**TRACT 9617, CAPRIANO PH. VI**

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on September 30, 2005, by Glenrock Builders, Inc., the subdivider of record and accepted by the City Council on October 19, 2005. Said improvements consisted of public streets, utilities and appurtenances.

The name of the surety on the contractor's bond for labor and materials on said project is Platte River Insurance Company.

Name and address of Owner: City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, California

Dated: \_\_\_\_\_, 2005.

\_\_\_\_\_  
Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk  
City of Morgan Hill, CA  
Date:





***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: OCTOBER 19, 2005***

***FINAL MAP APPROVAL FOR THE RANCH AT ALICANTE***  
***(TRACT 9716)***

**RECOMMENDED ACTION(S):**

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:**

Tract 9716 is a 15 lot subdivision bounded by Cochrane Road and Saint Marks Avenue (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on December 14, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

**FISCAL/RESOURCE IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 7**

**Prepared By:**

\_\_\_\_\_  
**Assistant Engineer**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

**Agenda Item # 8**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**

### **PUBLIC WORKS ASPHALT MAINTENANCE**

#### **AGREEMENT FOR FY 2005-2007**

#### **RECOMMENDED ACTION(S):**

1. Approve new maintenance agreement for Annual Miscellaneous Pavement Repair Services.
2. Authorize the City Manager to execute the agreement on behalf of the City.

**EXECUTIVE SUMMARY:** A Request for Proposal process was held to award a new agreement for maintenance services at various pavement locations throughout the City. The proposals received were from the companies listed below:

	Unit Cost Per Square Foot	
	4" Removal & Replacement	6" Removal & Replacement
El Camino Paving Inc.	\$9.20	\$10.75
Pavex Construction	\$15.00	\$17.00
Granite Construction	\$22.64	\$23.92

El Camino Paving provided the lowest unit cost per square foot. Given the rising cost of asphalt and compared to last year's unit price per square foot El Camino's proposal seems reasonable. Last year's contract was \$9.00 per square foot for six inch removal and replacement. El Camino's proposal is \$10.75 per square foot for six inch and \$9.20 for four inch removal and replacement. Staff recommends approval of the attached agreement at \$75,000 per year for two years based upon the rates submitted.

**FISCAL IMPACT:** Funding exists for the first year of this agreement in the FY 2005-06 Street budget.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **WILDLIFE TRAIL DESIGN CONTRACT**

**RECOMMENDED ACTION(S):** Authorize the City Manager to Execute an agreement with Bellinger Foster Steinmetz in an amount not to exceed \$40,450 for the development of construction documents and construction oversight for the Morgan Hill Wildlife Trail subject to the review and approval of the City Attorney

**EXECUTIVE SUMMARY:** On March 23, the City Council authorized staff to apply for a grant from the Santa Clara Valley Water District from the Trails and Open Space Grant Program. The City received a \$100,000 grant from the District for the construction of a Wildlife Trail between the Indoor Recreation Center and West Little Llagas Creek. Attached is the preliminary design for the trail.

The Wildlife Trail will consist of a meandering pedestrian/bicycle trail, native trees, and several small outcroppings of native grasses. Since the Council has declared this area a Wildlife Education and Interpretation Area, local environmental education groups will be able to propose the placement of educational exhibits along the trail. Any such efforts would be the subject of future City Council consideration.

In addition to the Santa Clara Valley Water District grant, funding for the Wildlife Trail will come from a separate grant that the City has received from the VTA for the development of a pedestrian/bicycle trail along West Little Llagas Creek.

Bellinger Foster Steinmetz completed the preliminary design for the Wildlife Trail and is prepared to begin developing construction documents in accordance with the construction schedule. Staff is making every attempt to get the trail completed simultaneously with the Indoor Recreation Center itself and recommends that the City Manager be authorized to enter into a contract with Bellinger Foster Steinmetz for the design of the Wildlife Trail.

**FISCAL/RESOURCE IMPACT:** The City's Adopted Budget includes \$40,000 for design of the Wildlife Trail on page 8 of the CIP. Overseeing the design of the Trail is an anticipated and included activity in the work program of the Public Works Department.

**Agenda Item # 9**

**Prepared By:**

**Program Administrator**

**Approved By:**

**Public Works Director**

**Submitted By:**

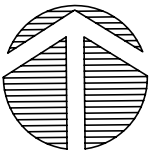
**City Manager**

# Morgan Hill Trails Grant

City of Morgan Hill

March, 2005

Bellinger Foster Steinmetz



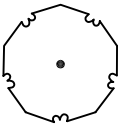
299 Cannery Row  
Monterey, CA 93940  
PH 831.646.1383  
Project #02.031

Landscape Architecture

FX 831.373.8653

EM go@bfsla.com

## LEGEND



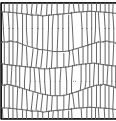
### Trees:

Quercus sp.

Platanus sp.

Oak

Sycamore



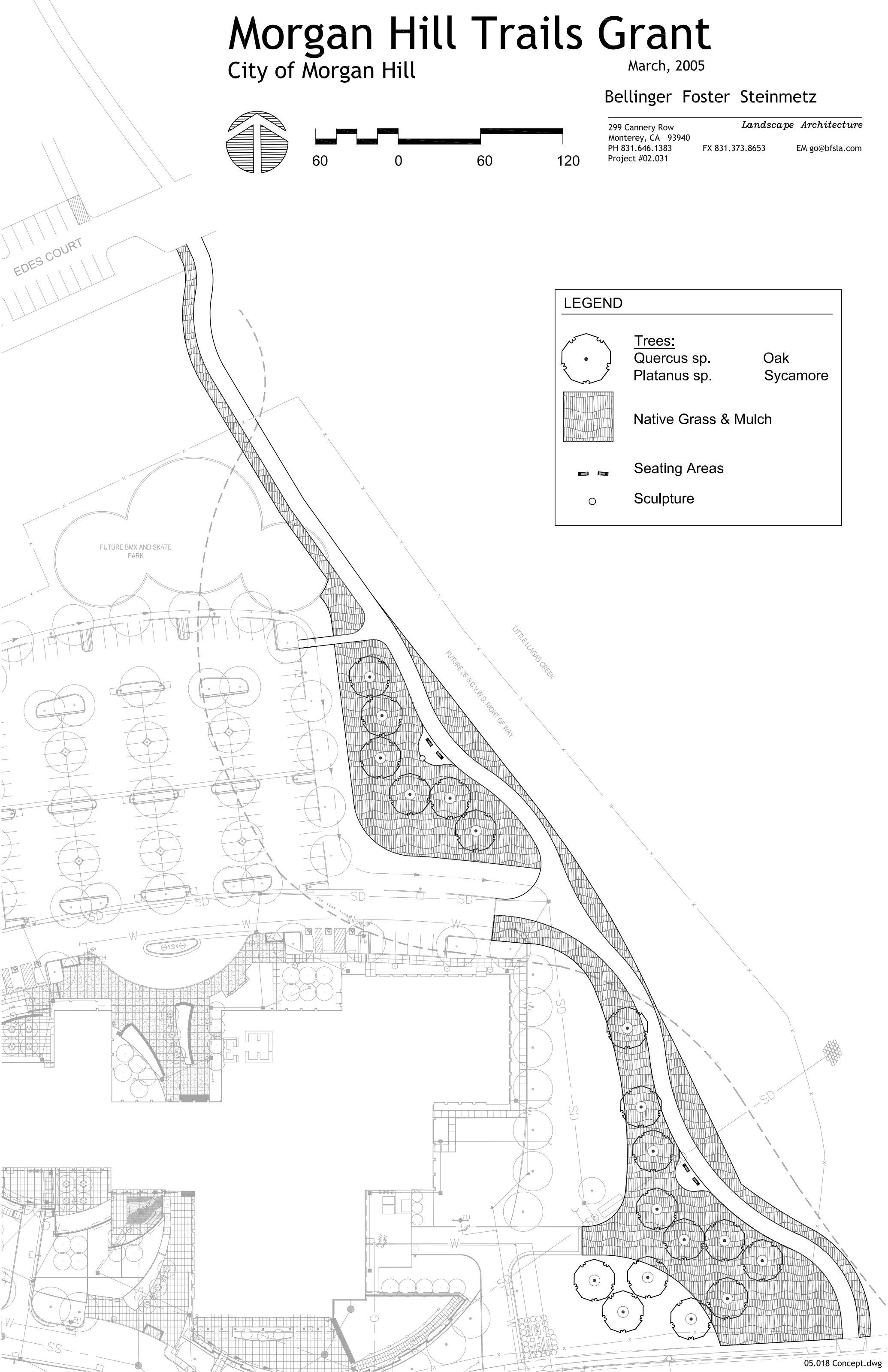
Native Grass & Mulch



Seating Areas



Sculpture





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

**Agenda Item # 10**

**Prepared By:**

**Assistant Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

### **AWARD OF DEPOT STREET SEWER REPLACEMENT PROJECT**

#### **RECOMMENDED ACTION(S):**

1. Award contract to D'Arcy & Harty Construction, Inc. for the construction of the Depot Street Sewer Replacement Project in the amount of \$382,940.
2. Authorize expenditure of construction contingency funds not to exceed \$38,294.
3. Appropriate \$117,000 from the unappropriated Sanitary Sewer Rehabilitation Fund (643).

#### **EXECUTIVE SUMMARY:**

The scope of work for this project includes the removal and installation of 1700 linear feet of sanitary sewer pipe on Depot Street between Main Avenue and 5<sup>th</sup> Street, including all trenching, backfilling, and pavement repair associated with installation, installing manholes, abandoning existing sewer lines, connecting existing service laterals to new sewer line, and other miscellaneous work.

The bid opening was held on October 6, 2005 and the bids received are as listed below. The low bidder has many years of experience in underground utility work. Although they have not previously performed work for the City of Morgan Hill, staff made necessary reference check on the company and is satisfied with the results. Staff recommends award of the contract to D'Arcy & Harty Construction, Inc. This project is scheduled to begin in November, 2005 and be completed by December, 2005. D'Arcy & Harty Construction, Inc.'s bid was less than 1% lower than the engineer's estimate of \$385,000.

D'Arcy & Harty Construction, Inc.	\$382,940
McGuire and Hester	\$386,900
Trinet	\$461,900

**FISCAL/RESOURCE IMPACT:** The total contract cost for this project is \$421,190, which includes a 10% contingency of \$38,294. Originally, the entire project was to be funding under the Sanitary Sewer Rehabilitation Fund (643), project #302093. Currently, the balance of project #302093 is approximately \$305,000. Staff recommends that \$117,000 be appropriated from the un-appropriated Sanitary Sewer Rehabilitation Fund (643).



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: *October 19, 2005***

### **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR SEWER INFILTRATION INVESTIGATION IN THE ATHERTON AREA**

**RECOMMENDED ACTION(S):** Authorize the City Manager to Execute a Consultant Agreement with V&A Consulting Engineers Inc. for Sewer Infiltration Investigation in the Atherton Area in the amount of \$28,600.

**Agenda Item # 11**

**Prepared By:**

**Deputy Director of  
Public  
Works/Operations**

**Approved By:**

**Public Works Director**

**Submitted By:**

**EXECUTIVE SUMMARY:** Beginning in 2000, the Public Works Department initiated a multi-year study to determine the presence and severity of Rain Dependent Infiltration and Inflow (I&I) into our Sanitary Sewer Collection System. Exceptionally dry or wet years statistically can skew the results of this type of study. Thus, multiple years are needed to determine with accuracy the location and magnitude of these problems, so that recommendations for the most cost effective corrective actions can be taken.

The attached map shows the area known as Basin 8 or the Atherton Area. Preliminary monitoring earlier this Spring in this area detected the presence of infiltration likely coming from the pipeline crossing under Llagas Creek. Additional monitoring is needed followed by video inspection to provide a basis of recommendation for repair.

Staff recommends approval of the proposal with V&A Associates to finalize a recommendation for repair in the Atherton Area to reduce I&I in our Sanitary Sewer Collection System.

**FISCAL/RESOURCE IMPACT:** Funding is available in the current year Sanitary Sewer Operations budget.

# Memorandum

## Public Works Department

**Date:** October 6, 2005

**To:** Public Works Director, Jim Ashcraft

**From:** Mori Struve, Deputy Director of Public Works-Operations

**Subject:** Sewer System Infiltration and Inflow Study- Recommendations

---

In 2000 through the professional engineering consulting services of V&A Consulting Engineers the City began an Investigatory Study of our Sewer System by installing 9 flow meters to determine the magnitude of rain dependent infiltration and inflow (I&I), pinpoint the problems areas, and make recommendations as to the appropriate course of action. The following summarizes the findings to date:

- Two general areas of the city have been identified as those contributing the most to I&I. These areas are shown as No.'s 8 and 13 on the attached drawing. Each number represents a location where flow monitors were set. The specific location for each flow monitor was selected to record all flows generated throughout a given shaded area.
- "Basins" 8 and 13 account for 78% of all I&I system-wide. I&I from these two basins equate to 20% of our system total dry weather flows.
- The remaining 22% of system-wide I&I is attributable to the remaining basins, but most likely originating from the oldest part of the sewer system in the downtown area. The downtown sewer system is most vulnerable to inflow at manholes located within are prone to local flooding. To prevent this type of inflow, special "hats" have been placed just under the manhole cover preventing inflow of this type. Public Works Operation personnel routinely inspect the inflow prevention hats and replace them as needed.
- A sewer system with a total amount of I&I quantified as 20% of total dry weather flows is not a significant problem. Many municipal systems have I&I amounts 7 to 8 times their dry weather flows.
- Morgan Hill representing 11.7 square miles experienced rainfall during the study period of 2456 million gallons. Of this 1.26% got into our system as I&I. Again, comparatively minor.
- It is recommended that we initiate construction improvements within Basin 13 due to the existence of a damaged sewer main in the Longview area. However, this is advised to address operational maintenance problems resulting from deteriorated pipe, root intrusion, and protruding lateral lines. If evaluated solely with the purpose of reducing I&I it would be economically less costly to treat what I&I enters the system within this basin than what it will cost to make necessary pipeline repairs.

- Specifically for properties within basins 8 & 13 it is recommended that we initiate a sewer lateral replacement program to compel private property owners to remove and replace a failing private sewer lateral at the time of the transfer of the property.
- Basin 8 is also identified as having an infiltration problem, but again, the total volume is minor. However, within this basin a greater potential for adverse impacts due to infiltration exists.

### Basin 13

Sharp increases in I&I correlated to rain events occur within this Basin as the wet season progresses and soils become saturated. This Basin is located at the downstream end of our Sewer System where capacity is least available. If I&I should occur and be combined with peak flows, sewer overflows downstream are likely.

The Study has located I&I entering the pipeline system within this Basin near a sewer pipeline undercrossing of Llagas Creek. However more flow monitoring and video inspection of this area is needed to identify the scope of work repair work needed to correct the problem.

Staff recommends proceeding with the attached V&A proposal for Investigation Services for the Atherton Area- Basin 13. The proposal is attached.





## CITY COUNCIL STAFF REPORT

**MEETING DATE:** *October 19, 2005*

### ESTABLISH NEW CLASSIFICATION AND SALARY RANGES

Agenda Item #12

Prepared/Approved  
By:

Human Resources  
Director

Submitted By:

City Manager

**RECOMMENDED ACTION(S):** 1) Adopt the attached new job description and salary range for the position of Public Safety Dispatcher Supervisor; 2) Abolish the Lead Public Safety Dispatcher position; 3) Reclassify and establish new salary range for Property/Evidence Technician; 4) Change title of Police Lieutenant to Police Commander; 5) Establish salary range for special assignments for Sr. Planner position; 6) Reclassify vacant Associate Planner position to Sr. Planner position.

#### EXECUTIVE SUMMARY:

The Police Department determined the need to abolish the Lead Public Safety Dispatcher position and establish a new position of Public Safety Dispatcher Supervisor to supervise the dispatch unit. In addition, in response to an audit of the department's evidence room, one of the current Police Records Specialist positions is being reclassified to that of Property/Evidence Technician. A study was conducted by the Human Resources Department to evaluate the duties of the proposed positions and to determine an appropriate salary range. Staff is recommending a classification and salary range for these positions as outlined in the attachments. Staff has met and conferred on these positions with CSOA, which will represent these classifications. CSOA is supportive of the job descriptions and salary ranges. In response to the recent reorganization of the Police Department, staff recommends that the title of the Police Lieutenant position be changed to that of Police Commander. Neither the classification specification nor the salary range needs to be changed. This title change is necessary to more accurately reflect the role of the position within the department.

It has been determined by the Community Development Department and BAHS that there is a need within the City departments for special assignments to the Senior Planner position to manage the considerably more responsible and/or more complex duties relating to areas like Economic/Downtown Development, Environmental Planning and/or Zoning issues. This position could expedite/facilitate the approval process as well as reduce costs to developers/businesses (applicants). For example, currently the Planning Division contracts out the environmental assessment of projects and passes the cost plus an overhead fee on to the applicants. This position would allow Planning to conduct some of this evaluation work in-house, which would be less costly to applicants than retaining outside consultants to prepare the work. The attached revised job description for Senior Planner incorporates the ability to add those special assignments to the current Senior Planner specification. HR staff recommends a salary enhancement of 10 percent to the Sr. Planner salary range for any such assignment and reclassifying a vacant Associate Planner position to a Sr. Planner position.

**FISCAL IMPACT:** None. The current Police Department budget incorporates the changes made to the police positions and there are salary savings within the Community Development Department's budget to accommodate the special assignment pay. In addition, half of the salary and benefit costs for the special assignment Sr. Planner position will be paid by RDA.

#### LIST OF ATTACHMENTS:

Senior Planner, Public Safety Dispatcher Supervisor and Property/Evidence Tech Classifications  
Salary Range for PSD Supervisor and Property/Evidence Tech



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 19, 2005***

**Agenda Item # 13**

**Prepared By:**

**Cmdr Terrie Booten**

**Approved By:**

**Chief Bruce C.  
Cumming**

**Submitted By:**

**City Manager**

### **PURCHASE OF POLICE VEHICLES**

#### **RECOMMENDED ACTION(S):**

1. Authorize the purchase of four (4) vehicles from the Ford Store through reliance upon the competitive bid process by the City of Gilroy for a total cost of \$91,069.85.
2. Declare four (4) vehicles being replaced as surplus and authorize sale of these vehicles at auction.

#### **EXECUTIVE SUMMARY:**

The Police Department is requesting the replacement of four vehicles in the 2005/2006 budget year. The attached spreadsheet identifies the vehicles being replaced and the funding source. The total cost for the vehicles is \$91,069.85. The amount includes tax, and freight.

The City is using the piggy back purchasing process in reliance upon Gilroy's competitive purchase process to purchase vehicles in accordance with Sec. 3.04.180 of the City Code.

The Department is aware of budget constraints and has evaluated the needs in regard to the replacement of vehicles. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

In addition a spreadsheet is attached showing the four (4) vehicles staff is asking Council to declare as surplus and authorize the sale of these vehicles at auction.

#### **FISCAL IMPACT:**

The cost of these vehicles is funded from the Vehicle Replacement Fund in the 05/06 budget as identified in the attached spreadsheet.

# 2005-2006 VEHICLE REPLACEMENT

## POLICE DEPARTMENT

VEHICLE	REPLACE WITH:	COMMENTS/STATUS	COST	FUNDING/DIVISION
P00105 2000 Ford Police Interceptor	NEW 2006 Ford Police Interceptor  City of Gilroy Competitive Bid	P00105 will be surplusd.	Total: \$22,767.47	790-43830-8500 Police
P00106 2000 Ford Police Interceptor	NEW 2006 Ford Police Interceptor  City of Gilroy Competitive Bid	P00106 will be surplusd.	Total: \$22,767.47	790-43830-8500 Police
P00107 2000 Ford Police Interceptor	NEW 2006 Ford Police Interceptor  City of Gilroy Competitive Bid	P00107 will be surplusd.	Total: \$22,767.47	790-43830-8500 Police
P00109 2000 Ford Police Interceptor	NEW 2006 Ford Police Interceptor  City of Gilroy Competitive Bid	P00109 will be surplusd.	Total: \$22,767.47	790-43830-8500 Police

## 2005-2006 SURPLUS VEHICLES/EQUIPMENT

### POLICE DEPARTMENT

P00105	2000 Ford Police Interceptor
P00106	2000 Ford Police Interceptor
P00107	2000 Ford Police Interceptor
P00109	2000 Ford Police Interceptor



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **REPLACEMENT PURCHASE OF A POLICE VEHICLE**

#### **RECOMMENDED ACTION(S):**

1. Authorize the vehicle purchase and police equipment build out through The Ford Store Morgan Hill for the vehicle identified in this report for a total cost of \$23,517.70.
2. Approve a \$13,518.00 budget increase in the Equipment Replacement Fund for the portion of the replacement cost over the insurance deductible that will be financed with insurance proceeds or other reimbursements.

#### **EXECUTIVE SUMMARY:**

The Police Department is requesting the replacement of one vehicle in the 2005/2006 budget year. The vehicle being replaced was a 2005 Ford Taurus with only 1300 miles on the odometer. It caught fire in the engine compartment and burned beyond repair while it was being used for police duties on September 30, 2005. The total cost for the vehicle replacement is \$23,517.70. The amount includes equipment replacement, vehicle build out, tax, and freight.

In 1996 the City applied for and received a Ford Motor Company Fleet Identification Number (FIN). The FIN grants the City a standard government fleet price (discount) set by Ford Motor Company on any vehicle purchased at any dealership. Because the vehicles the Police Department required were not available on the State bid this year, The Ford Store Morgan Hill used our FIN and in addition, applied for and received a special fleet concession available to municipalities not using State pricing. This concession allows us to receive the benefit of a government discount when a model has not been bid by the State. A third discount was received from the owner of The Ford Store Morgan Hill when he adjusted the final price. Informal bids from Folsom Ford and Lynch Ford were higher than the bid from The Ford Store. Section 3.04.150 MHMC allows "that competitive bids upon notice would not be likely to result in a lower price to the city from a responsible bidder, or would cause unnecessary expense or delay under the circumstances".

The Ford Store is also extending us the courtesy of working with our current vendor (Emergency Vehicle Solutions) at EVS's cost to install the equipment on the police vehicle. This is a savings in staff time and turn around time for the vehicle.

The Department is aware of budget constraints and has evaluated the needs in regard to the replacement of this vehicle. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

#### **FISCAL IMPACT:**

\$10,000.00 of the cost of this vehicle will be paid from the General Liability Fund (795-42540-8210). The remaining replacement cost to be covered by insurance (or other source) will be paid from the equipment replacement fund (790-43830-8500).

**Agenda Item #14**

**Prepared By:**

**Cmdr Terrie Booten**

**Approved By:**

**Chief Bruce C. Cumming**

**Submitted By:**

**City Manager**

**AGENDA BUDGET SCORECARD****FISCAL 2005/06****Adjustment #:**

009

**FUND:**

790

Equipment Replacement

**DEPARTMENT:****OBJECT**

37738

Insurance Proceeds

**PROJECT NUMBER:**

-

**AGENDA DATE:**

10/19/05

**AGENDA ITEM TITLE:**

Replacement Purchase of Police Vehicle

	<b>07/01/05 BEGINNING FUND BALANCE</b>	<b>ESTIMATED REVENUES</b>	<b>APPROPRI- ATIONS</b>	<b>06/30/06 ENDING FUND BALANCE</b>
<b>ORIGINAL BUDGET</b>	3,009,624.00	538,545.00	469,827.00	3,078,342.00
<b>CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION</b>	-	-	-	-
<b>RECOMMENDED ACTION</b>	-	13,518.00	-	13,518.00
<b>RESULT OF RECOMMENDED ACTION</b>	<u>3,009,624.00</u>	<u>552,063.00</u>	<u>469,827.00</u>	<u>3,091,860.00</u>

**AGENDA BUDGET SCORECARD****FISCAL 2005/06****Adjustment #:**

010

**FUND:****DEPARTMENT:****OBJECT****PROJECT NUMBER:**

790	Equipment Replacement
8500	Equipment Replacement
43830	Auto/Trucks
000000	-

**AGENDA DATE:****AGENDA ITEM TITLE:**

10/19/05
Replacement Purchase of Police Vehicle

	<b>07/01/05 BEGINNING FUND BALANCE</b>	<b>ESTIMATED REVENUES</b>	<b>APPROPRI- ATIONS</b>	<b>06/30/06 ENDING FUND BALANCE</b>
<b>ORIGINAL BUDGET</b>	3,009,624.00	538,545.00	469,827.00	3,078,342.00
<b>CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION</b>	-	13,518.00	-	13,518.00
<b>RECOMMENDED ACTION</b>	-	-	13,518.00	(13,518.00)
<b>RESULT OF RECOMMENDED ACTION</b>	<u>3,009,624.00</u>	<u>552,063.00</u>	<u>483,345.00</u>	<u>3,078,342.00</u>



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: OCTOBER 19, 2005**

**Agenda Item # 15**

**Prepared By:**

**Municipal Services  
Assistant**

**Approved By:**

**Jim Rowe**

**Submitted By:**

**City Manager**

### **FINDINGS FOR BUILDING PERMIT FEES CHARGED FOR INSTALLATION OF A SOLAR – ELECTRIC PHOTOVOLTAIC ROOF SYSTEM**

#### **RECOMMENDED ACTION(S):**

Take no action. Information only.

#### **EXECUTIVE SUMMARY:**

At the City Council meeting on September 7, 2005 Mr. Robert Kushner, owner of 17660 Monterey Road, requested a review and refund of the building permit fees he incurred for the installation of a solar-electric photovoltaic roof system at the above mentioned commercial property. In addition, Mr. Kushner also stated that other cities charge less for a similar or larger system.

The Building Division issues approximately 24 permits annually for the installation of solar-electric photovoltaic roof systems. Mr. Kushner's building permit fees totaled \$5,389.32 based on a construction valuation of \$256,000.00. The fees were calculated as follows: Plan Check Fee \$2,470.03, Combination Permit Fee \$2,600.03, General Plan Amendment (GPA) Fee \$253.50, Microfilm Fee \$12.00, Seismic Fee \$53.76, Grand Total \$5,389.32. Attached is a copy of Mr. Kushner's building permit.

Council member Mark Grzan requested staff investigate Mr. Kushner's comments and report back to Council their findings. Staff contacted six jurisdictions and found the following:

1. City of Campbell: Cost of permit would be about \$5,000.00 – \$6,000.00 based on a construction valuation of \$200,000.00.
2. Town of Los Gatos: Cost of permit would be about \$4,300.00 based on a construction valuation of \$256,000.00.
3. City of Fremont: Cost of permit would be about \$3,911.16 based on a construction valuation of \$256,000.00.
4. City of Gilroy: Cost of permit would be about \$3,584.68 based on a construction valuation of \$256,000.00.
5. City of Oakland: Cost of permit could be \$150.00 – \$155.00 for renewable energy, if all design criteria is met and self-certification form is submitted and approved.
6. City of San Leandro: They base their construction valuation on the cost of installation, structural supports, and electrical work. Plan check is calculated on an hourly basis. They were unable to give an estimate of cost.

For a detailed breakdown of the City's findings please see attachment.

Per Ordinance No. 1593, New Series, the City adopted the Uniform Administrative Code, 1997 Edition, which defines permit fees. The 1997 Uniform Administrative Code, Section 304 – Fees states, "The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air-conditioning, elevators, fire-extinguishing systems and other permanent equipment." Attached is a copy of the Uniform Administrative Code, 1997 Edition, Table 3-A – Building Permit Fees.

After an investigation of Mr. Kushner's request staff confirms that all fees were calculated in accordance with the adopted fee schedule and recommends that no further action be taken.

#### **FISCAL IMPACT:**

No budget adjustment required



# CITY OF MORGAN HILL

## BUILDING INSPECTION DIVISION

17555 Peak Avenue  
Morgan Hill, CA 95037  
Office (408) 779-7241

STREET COPY

# BUILDING PERMIT

<b>BUILDING ADDRESS</b> <b>17660 MONTEREY RD</b> <b>BOB KUSHNER TRUSTEE</b> <b>17660 MONTEREY RD STE G</b> <b>MORGAN HILL, CA 95037</b> Phone: (408) 455-2000		<b>PARCEL/TRACT #</b> <b>LOT#</b>		<b>ISSUED DATE:</b> 05/23/05 <b>APN#</b> 726-23-011	<b>ISSUED BY:</b> BBB <b>RECEIVED DATE:</b> 04/28/05	<b>PERMIT NUMBER</b> <b>BLD2005-00430</b>
		<b>Architect</b> License No.: Phone: Exp Date:		<b>BUILDING: Y ELECTRICAL: Y MECHANICAL: N PLUMBING: N REROOF: N</b> <b>EXISTING USE:</b> Commercial <b>PROPOSED USE:</b> Commercial <b>GROUP:</b> ... <b>VALUATION:</b> \$256,000.00 <b>UBC:</b> 2001 NEC: 2001		
<b>Contractor</b> <b>SUN POWER &amp; GEOTECHNICAL ENERGY</b> <b>863 E FRANCISCO BLVD STE A</b> <b>SAN RAFAEL, CA 94901</b> M.H. Bus. Lic. No.: NEW Exp Date: 6/30/05 Phone: (415) 455-4201		<b>Engineer</b> License No.: Phone: Exp Date:		<b>Building</b> <b>Electrical</b> <b>Mechanical / Plumbing</b>		<b>CONSTRUCTION TYPE:</b> <b>VALUATION:</b> \$256,000.00 <b>UBC:</b> 2001 NEC: 2001
<b>License Class:</b> STATE <b>State License Number:</b> 759086 <b>Expiration Date:</b> 01/31/06 I Herby affirm that I am licensed under the provisions of Chapter 9 commencing with Section 7000 of Division 3 of the Business and Professions Code, and my license is in full force and effect.						
<b>HAZARDOUS MATERIALS:</b> Indicate if the intended occupancy will use chemicals, in filling Yes acknowledge that H & S code sections 25505, 25533 & 25534 as well as filing directions were made available to you. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> DATE 5/23/05						
<b>WORKERS' COMPENSATION DECLARATION:</b> I hereby affirm that I have a certificate of consent to self-insure, or a certificate of workers' compensation insurance or a certified copy thereof. SEC. 3800, LAB. C. SIGNATURE X DATE 5/23/05 Policy Number 1625861 Expiration Date: 04/01/06						
<b>CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION:</b> (This section need not be completed if the permit is for one hundred dollars (\$100) or less. I shall not certify that if in the performance of the work for which this permit is issued I shall not employ any person in any manner as to become subject to the workers' compensation laws of California.) SIGNATURE X DATE 5/23/05						
<b>Notice to applicant:</b> If after making this certificate of exemption you should become subject to the workers' compensation provisions of the labor code, you must forthwith comply with such provisions or this permit shall be deemed revoked.						
<b>OWNER BUILDER DECLARATION:</b> I hereby affirm that I am exempt from the contractor's license law for the following reason (Sec. 7031.5, Business and Professions Code: any City or County which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the contractor's license law (Chapter 9 (Commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than (\$5000).) <input type="checkbox"/> I, as owner of the property, or my employer with wages as their sole compensation, will do the work and the structure (Sec. 7044, Business and Professions Code: the contractor's license law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale). <input type="checkbox"/> I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: the contractor's license law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the contractor's license law). <input type="checkbox"/> I am Exempt under Sec. B. & P.C. for this reason.						
SIGNATURE X DATE						
I certify that I have read this application and state that the above information is correct. I agree to comply with all City and county ordinances and state laws relating to building construction, and hereby authorize representatives of this agency to enter upon the above-mentioned property for inspection purposes. I (we) further agree to save, indemnify, and keep harmless the City of Morgan Hill against liabilities, judgments, costs, and expenses which may in any way accrue against said City in consequence of the granting of this permit and will pay all expenses including attorney's fees in connection therewith. All work performed by virtue of this permit must conform to plans and specifications and application on filed by the owner or his authorized agent with the Building Inspection Division. This permit does not constitute approval of any violation of the above recited provisions, nor of any state or city ordinance.						

### Plan Check Fees

Gen Plan Admendment Rev 5% \$123.50  
 Plan Check Fee - 95% \$2,470.03  
**Paid Plan Check Fees:** \$2,593.53

### Permit Fees

Combination Permit Fee \$2,600.03  
 Gen Plan Admendment Fee 5% \$130.00  
 Micro Film Fee-\$2.00 per/Pg \$12.00  
 Seismic fee \$53.76  
**Paid Permit Fees:** \$2,795.79

DATE

5/23/05

## Cost Comparison for the Installation of a Solar-Electric Photovoltaic Roof System

Jurisdiction	Construction Valuation	Estimated Cost of Building Permit	Notes
City of Campbell	\$200,000	\$5,000 - \$6,000	For residential projects they recognize expensive equipment and make fees reasonable based on inspection time frame and scope of work.
Town of Los Gatos	\$256,000	\$4,300	Based on the 2001 CBC Fee Schedule and they reference construction valuations from the Building Standards magazine
City of Fremont	\$256,000	\$3,911.16	For valuations between \$100,001 – \$500,000 = \$1033.62 for the first \$100,000 plus \$5.91 for each additional \$1,000 or fraction thereof. Plan check for a commercial project is 100% of the building permit fee.
City of Gilroy	\$256,000	\$3,584.68	Building Permit Fee: \$1874.10 Plan Check Fee: \$1405.58 Fire Department Fee: \$305.00 Grand Total: \$3584.68
City of Oakland		\$150 - \$155	Valid for all permits using renewable energy. There is a certain design criteria that needs to be met and the applicant has to file a self certification checklist in order to qualify for the low fee.
City of San Leandro			All fees are based on the valuation of the work being done to install the equipment including structural supports and electrical work. The plan check is calculated on an hourly basis. They were unable to give an estimated quote.

TABLE 3-A—BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof
<b>Other Inspections and Fees:</b>	
1. Inspections outside of normal business hours (minimum charge—two hours)	\$47.00 per hour*
2. Reinspection fees assessed under provisions of Section 305.8	\$47.00 per hour*
3. Inspections for which no fee is specifically indicated (minimum charge—one-half hour)	\$47.00 per hour*
4. Additional plan review required by changes, additions or revisions to plans (minimum charge—one-half hour)	\$47.00 per hour*
5. For use of outside consultants for plan checking and inspections, or both	Actual costs**

\*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

\*\*Actual costs include administrative and overhead costs.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: October 19, 2005**

**Agenda Item #16**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1740, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL, R-2 (3500) RESIDENTIAL AND CG, GENERAL COMMERCIAL TO CC-R, CENTRAL COMMERCIAL/RESIDENTIAL FOR TWENTY NINE PARCELS TOTALING 13.25 ACRES LOCATED AT THE SOUTHEAST CORNER OF EAST DUNNE AVENUE AND CHURCH STREET AND SOUTH SIDE OF EAST OF DUNNE AVENUE BETWEEN MONTEREY ROAD AND CHURCH STREET NORTH OF BISCEGLIA AVENUE. (APNS 817-01-018 thru 022, 026, 031 thru 039, 045, 046, 050, 051, 053 thru 057, 059 thru 064)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1740, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On October 5, 2005, the City Council Introduced Ordinance No. 1740, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment required.

## **ORDINANCE NO. 1740, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL, R-2 (3500) RESIDENTIAL AND CG, GENERAL COMMERCIAL TO CC-R, CENTRAL COMMERCIAL/RESIDENTIAL FOR TWENTY NINE PARCELS TOTALING 13.25 ACRES LOCATED AT THE SOUTHEAST CORNER OF EAST DUNNE AVENUE AND CHURCH STREET AND SOUTH SIDE OF EAST OF DUNNE AVENUE BETWEEN MONTEREY ROAD AND CHURCH STREET NORTH OF BISCEGLIA AVENUE. (APNS 817-01-018 thru 022, 026, 031 thru 039, 045, 046, 050, 051, 053 thru 057, 059 thru 064)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Amending the zoning designation from ML, Light Industrial, R-2 (3,500) Residential and CG, General Commercial to CC-R, Central Commercial/Residential on twenty nine parcels totaling 13.25 acres.

**SECTION 2.** There hereby is attached hereto and made a part of this ordinance, a zoning plat entitled "Exhibit A" Map Showing Lands of Alcini and Basanty, et al, being a Part of Ordinance No. 1740, New Series, which gives the boundaries of the described parcels of land.

**SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

**SECTION 4.** The City Council hereby finds that the amendment established by this ordinance as herein described is compatible with the goals, objectives, policies and land use designation of the General Plan of the City of Morgan Hill. The Council further finds that the proposed amendment is required in order to serve the public health, convenience and general welfare as provided by Section 18.62.010 of the Morgan Hill Municipal Code.

**SECTION 5.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 6.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 5<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of October 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**⌘ CERTIFICATE OF THE CITY CLERK ⌘**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1740, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of October 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – SEPTEMBER 30, 2005**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 2:08 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Carr, Grzan, Sellers, Tate and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Manager/Deputy City Clerk Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

**WORKSHOP TOPICS:**

1. **STATUS REVIEW OF COUNCIL ADOPTED 2005 GOALS**
2. **REVIEW OF COUNCIL SUBCOMMITTEE STRUCTURE, PROCESS AND RESULTS**
3. **IMPROVE THE EFFECTIVENESS OF CITY COUNCIL MEETINGS** (Continued From 9/7/05 Meeting)
4. **PLANNING FOR ANNUAL GOAL SETTING RETREAT IN JANUARY 2006**

The City Council reviewed the status of the adopted 2005-Council Goals established in January 2005 and updated the goals accordingly. The Council reviewed the Council subcommittee structure and identified what is working and what is not working in the committee system. The discussion of the above items allowed the Council and City Manager the opportunity to plan for the January 2006-Council goal setting session.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURN TO MAMA MIA'S RESTAURANT**

Mayor Kennedy adjourned the meeting to Mama Mia's Restaurant at 5:15 p.m.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 7:00 P.M.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**



**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – OCTOBER 5, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Kennedy  
Late: Mayor Pro Tempore/Vice Chair Tate (arrived at 6:03 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 3

**2.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al.  
[Consolidated Actions]  
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 17440 Monterey Road, APN: 726-14-028  
Negotiating Parties: City Manager, Director of Business Assistance & Housing Services,  
City Attorney  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Interim City Attorney/Agency Counsel Siegel announced that the City Council met in closed session on items 2 and 3 as listed on the agenda and gave direction to the representatives to negotiate. He indicated that there was no other reportable action taken in closed session.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **PROCLAMATION**

Mayor Kennedy presented Roger Beaulieu and Ray Jimenez, representatives of the Teachers Aid Coalition (TAC), with a proclamation, proclaiming *TAC a Valuable Resource for Morgan Hill Educators*. It was announced that the next annual fall school supplies give away will take place on Thursday, October 13, 2005 at 3:00 p.m. at the Morgan Hill Unified District Warehouse located on Tilton Avenue. Mr. Beaulieu announced that TAC will be hosting a Holiday Wine Tasting fundraising event at Clos LeChance on October 27, 2005 with the proceeds to be used to purchase classroom supplies.

### **RECOGNITIONS**

Mayor Kennedy presented a Certificate of Recognition to Teresa Alvarado, PG&E Company, proclaiming October 10, 2005 as *Pacific Gas and Electric Company's Centennial Anniversary*.

### **CITY COUNCIL REPORT**

Mayor Pro Tempore Tate reported that the Council held a retreat last Friday afternoon. He indicated that the Council reviewed the status of the policies and goals established in January 2005. The Council reviewed adopted goals, and had an opportunity to update the goals. The Council also reviewed its committee structure implemented at the January 2005 retreat. The Council looked at what was working/not working in the committee system. He stated that the Council disclosed insights on what it can do to improve the committee system. He stated that the results of the afternoon retreat was beneficial and gives the Council an advantage in terms of going into its January retreat to set goals for 2006. He felt the Council is ahead in setting its direction for the City and that the retreat resulted in a positive experience. He indicated that he serves as chair to the Financial Policy Committee. He stated that this Committee has a single focus at this time; the Community Conversation. He indicated that it is

proposed to commence the conversation in November 2005. The City will conduct preliminary education on what the process will entail. He stated that the idea of the community conversation is to advise citizens that the City is spending more than it is bringing in, in terms of revenue. He said the City would like to have a conversation with the residents of the community to determine how this problem is to be fixed. He also serves on the Public Safety and Community Services Committee. This Committee's recent emphasis has been on the indoor recreation center and its operational model; including who is to be the operator of the center. It was his belief that within the next 30 days, the Committee will return with recommendations to the Council on the indoor recreation center.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that he did not have a special report to present this evening.

### **CITY ATTORNEY REPORT**

Interim City Attorney Siegel stated that he did not have a report to present this evening.

### **OTHER REPORTS**

Council Member Sellers announced that his son turned 16 years old today and wished him a happy birthday.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Dan Craig indicated that the Downtown Association offered to make periodic updates on what is taking place in the downtown. He announced that at the heels of the successful Taste of Morgan Hill, the next downtown event is the annual Safe Trick or Treat to be held on Monday, October 31 from 5-7 p.m. He indicated that some downtown streets will be closed for this event. He thanked the sponsors of the event. In November, the Poppy Jasper Film Festival will be held at the Granada Theater. He stated that the Chamber of Commerce and the Downtown Association have pulled funds together to make the minor renovations necessary to allow this event to move forward. He said the Downtown Association is looking forward to the opening of Poppy's Fresh Seafood and Poultry Market to be located at 30 East Third Street. It is anticipated that the business will open in November, in time for the holidays. He noted that there are a rare number of vacancies occurring in the downtown. However, in each of these instances, there has been a lot of interest in activity between potential tenants and property owners. It was his belief that these buildings would not be vacant long and that he would be announcing the businesses that will open at the various locations soon. It was his understanding that several downtown housing units have been submitted under the City's Measure C competition, vying for downtown set asides. He felt that this speaks to investors' confidence in the housing market.

Mayor Pro Tempore Tate addressed the Council as a member of the public, announcing that Leadership Morgan Hill is accepting applications for the Class of 2006. He invited individuals interested in

Leadership Morgan Hill to attend an informational session to be held on Monday, October 24 at 5:30 p.m. at the Morgan Hill House/Villa Mira Monte located on Monterey Road. He encouraged individuals to submit applications; indicating that applications can be downloaded or obtained at the informational session.

Mayor Kennedy announced that the Morgan Hill Dayworkers Committee will be holding a fundraising event this Saturday at 5:30 p.m. at St. Catherine's Hall.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-10, as follows:*

1.        **REJECTION OF BID FOR THE BUTTERFIELD WELL PUMP STATION PROJECT**  
***Action:** 1) **Rejected** the Bid Received on September 28, 2005 for the Construction of the Butterfield Well Pump Station; and 2) **Authorized** Staff to Re-bid the Project.*
2.        **POLICY RECOMMENDATIONS FROM THE UTILITIES AND ENVIRONMENT SUBCOMMITTEE ON LEGISLATION**  
***Action:** **Took No Action** on Proposition 80 and the Video Choice Act of 2005.*
3.        **CONTRACT FOR MICROFICHE CONVERSION SERVICES**  
***Action:** **Awarded** Contract for the Conversion of all Microfiche Archives to Electronic Images to Convert-A-Doc in the Amount of \$56,324.45, Subject to Review and Approval by City Attorney.*
4.        **PURCHASE ORDER FOR EQUIPMENT FOR THE NEW POLICE FACILITY**  
***Action:** **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$6,000 to Verizon Telephone Company for the Additional Cost of the Installation of Upgraded Phone Equipment and the Transference of Equipment from the Old Police Facility to the New Police Facility.*
5.        **LABOR CONTRACT WITH AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 101**  
***Action:** **Approved** Three-Year Memorandum of Understanding with the American Federation of State, County and Municipal Employees (AFSCME) Local 101.*
6.        **LABOR CONTRACT WITH MORGAN HILL COMMUNITY SERVICE OFFICER ASSOCIATION (CSOA)**  
***Action:** **Approved** Three-Year Memorandum of Understanding with the Morgan Hill Community Service Officer Association (CSOA).*

7. **ORGANIZATION OF THE RECREATION AND COMMUNITY SERVICES DEPARTMENT**  
**Action:** 1) **Authorized** the Position of “Director of Recreation and Community Services”; and  
2) **Directed** the City Manager to Submit Recommendations on Any Other Changes that May be Appropriate Within 90 Days.
8. **CITY COUNCIL SPECIAL MEETING NOTES, SEPTEMBER 8, 2005**  
**Action:** **Received**, Information Only; No Action Required.
9. **CITY COUNCIL SPECIAL MEETING MINUTES OF SEPTEMBER 21, 2005**  
**Action:** **Approved** as submitted.
10. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 21, 2005**  
**Action:** **Approved** as submitted.

### ***City Council Action (Continued)***

#### **CONSENT CALENDAR:**

Council Member Sellers requested that item 11 be removed from the Consent Calendar as he would be recusing himself from this item. He excused himself from the Dais.

**Action:** On a motion by Mayor Pro Tempore Tate and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Council Member Sellers absent, **Approved** Consent Calendar Item 11, as follows:

11. **EMERGENCY EXPENDITURE FOR STORM LINE REPAIR ON EAST CENTRAL AVENUE – Resolution No. 5949**  
**Action:** 1) **Adopted** Resolution No. 5949, Declaring the Need for an Emergency Expenditure for Storm Line Repair on East Central Avenue; and 2) **Approved** Payment in the Amount of \$12,654 for the Emergency Work.

### ***City Council Action***

#### **PUBLIC HEARINGS:**

12. **GENERAL PLAN AMENDMENT, GPA-05-03 AND PREZONING APPLICATION, ZA-05-10; CONDIT ROAD-KUBO – Resolution No. 5950 and Ordinance No. 1739, New Series**

Planning Manager Rowe presented the request to amend the general plan land use designation from office industrial to commercial, prezoning the area to Planned Unit Development, and the approval of a negative declaration on approximately 20 acres of land located between Highway 101 and Condit Road,

south of Diana Avenue. He informed the Council that the Planning Commission voted 6-0 to recommend approval of the general plan, rezoning and negative declaration on September 27, 2005.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Kennedy stated that he would be abstaining from these particular actions based on prior statements he made with respect to this property.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Approved** the Negative Declaration.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Adopted** Resolution No. 5950, Approving General Plan Amendment.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Waived** the Reading in Full of Ordinance No. 1739, New Series, Pre-zoning the area PUD.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1739, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.87 ACRES FROM COUNTY OF SANTA CLARA AGRICULTURAL ZONING (A-20) TO PLANNED UNIT DEVELOPMENT (PUD) ZA-05-10: CONDIT-KUBO (APN 728-17-011, -024, -025), by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: Kennedy; ABSENT: None.***

**13. GENERAL PLAN AMENDMENT APPLICATION, GPA-04-09/ZONING AMENDMENT, ZA-05-01: MONTEREY-ALCINI; AND GENERAL PLAN AMENDMENT GPA-04-10: E. DUNNE-BASANTY – Resolution Nos. 5951 and 5952; Ordinance No. 1740, New Series**

Planning Manager Rowe presented the request to amend the general plan land use diagram on two parcels currently designated as light industrial. He informed the Council that the applicant is requesting that the general plan land use designation be changed to mixed use to allow the opportunity to extend the downtown mixed use zoning district south to the site. With respect to the Alcini parcel, there is a request to amend the general plan land use designation from commercial to mixed use as there is a proposal to place a vertical mixed use project submitted as part of a Measure C project this week. He informed the Council that the Planning Commission reviewed the two applications and the intervening lands. The Planning Commission determined that there is a pattern of mixed use within the area and that it made sense to extend the study area for the environmental review to encompass other sites. Therefore, 29 parcels, comprising of approximately 13.25 acres are being recommended as a City initiated expansion of the area to extend the mixed use designation from East Dunne area south to Bisceglia, between Monterey and Church and east to the Union Pacific Railroad. He indicated that the proposed

extension of the designation would be consistent with General Plan land use policies 13d, 13f, and 13l as these policies call for the City to continue the downtown streetscape and pedestrian oriented design theme along Monterey Road, for at least a block; extending it east toward Butterfield Boulevard.

Planning Manager Rowe informed the Council that the Planning Commission, at their September 27 meeting, voted 5-1 to recommend approval of the combined area, but voted 2-4 (4 no votes) to recommend extension of the zoning amendment that would recommend approval of the zoning to extend the central commercial district further south. This recommendation is based on a prior Council decision to extend the waiver of the guest parking requirements for the downtown, the recommendation contained in the Downtown Plan to eliminate the guest parking requirements for residential uses, and to eliminate the on site parking requirements for commercial uses. He stated that the Planning Commission expressed concern that the City lacks public parking facilities in this area and that there may be a need for guest parking. There was concern expressed about three-story buildings adjacent to existing residential development. He said that it was noted, at the Planning Commission meeting, that a three-story height is currently allowed for portions of property fronting Monterey Road zoned general commercial and a 50-foot height limitation is currently allowed on the site designated industrial. He indicated that the recommended actions before the Council are: 1) to conduct the public hearings, and 2) approve the mitigated negative declaration, followed by the approval of the resolutions amending the general plan for the two sites. The Council would then conduct a public hearing on the zoning amendment application.

Mayor Kennedy opened the public hearing for GPA-04-09: Alcini and GPA-04-10: Basanty.

Vince Burgos, Development Process Consultant, representing the Alcini family, informed the Council that the Alcini family submitted an application to conform to the request and the wishes of the Council when the downtown area was extended to Bisceglia Avenue. He stated that the Alcini family has submitted a Measure C application for a vertical mixed use project and that the vertical mixed use project proposes to incorporate guest parking.

Mayor Kennedy said that it was his understanding that the guest parking requirement is being met by both applications.

Mr. Burgos responded that the Alcini vertical mixed use project exceeds the guest parking requirement.

Robert Basanty requested that the zoning amendment application be approved so that the property can conform to the general plan application submitted. He stated that he proposes more than the adequate parking spaces required. He indicated that he proposes to construct a three story building with the first story to accommodate 18 retail spaces; and that the second and third floors would accommodate 18 apartment units on each floor for a total of 36 apartment units. He proposes to provide 99 retail parking spaces, 32 garage parking spaces and 48 guest parking spaces; for a total of 179 parking stalls and accommodates handicap parking spaces.

No further comments being offered, the public hearing was closed.

Mayor Kennedy disclosed that he spoke with Mr. Alcini and Mr. Basanty prior to the meeting to address the guest parking requirements.

Council Member Sellers inquired what impacts would occur to the Measure C applications should the Council not approve the zoning amendment designation request to CC-R.

Planning Manager Rowe said that the Planning Commission recommends the Council apply the mixed use land use designation to the site. However, the conforming zoning to this designation would be a CC-R district. Should the Council leave the designation as mixed use, the zoning would not conform to the Measure C application. This would make the Alcini application ineligible to participate in the upcoming Measure C competition.

In response to Council Member Carr's question, Planning Manager Rowe felt the main concern of the Planning Commission dealt with their objection to waiving residential guest parking. He noted that the downtown has public parking facilities available. However, north of Main and south of Dunne Avenue, there are no public parking facilities available. This has been a stated concern of the Planning Commission. He informed the Council that a planning commissioner had a concern regarding the three-story height on interior areas. The commissioner expressed concern that once you extend a three-story structure in an older industrial area, there may be an incentive to add additional mixed use. As you begin to concentrate this type of development in this area, it would take away from the immediate core of the downtown area. The Planning Commission supported a change in land use because it made sense. However, Commissioner Mueller expressed concern that this may serve as a catalyst to further expand mixed use into South County Industrial park. He informed the Council that the four Commission members voting not to recommend the zone change stated their concerns of waiving the guest parking requirements of the CC-R zoning district.

In response to Mayor Kennedy's question as to where these projects are in the Measure C process, Planning Manager Rowe indicated that Mr. Basanty did not file an application for this year's competition. However, Mr. Basanty has shown the Council conceptual plans for next year's application. He indicated that Mr. Alcini filed a Measure C application on Monday and that staff is required, under Measure C, to review each application for consistency with general plan and zoning. The review needs to be concluded within 15 days upon receipt of applications. He said that in order to complete the 15-day review period, the Council needs to take action on the general plan and zoning amendment applications this evening. Should the Council not approve the actions this evening, the Alcini's Measure C application would be returned.

Interim City Attorney Siegel said that the issues in front of the Council, under this public hearing, are the mitigated negative declaration and the adoption of the two general plan amendments. Assuming the mitigated negative declaration is approved, the Council would open a second public hearing on the zoning matter. He indicated the Council may wish to separate its discussions on these issues. If the mitigated declaration is not approved, the Council does not need to proceed with the zoning application.

**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*



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**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5951, Approving the General Plan Amendment for Alcini.*

**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5952, Approving the General Plan Amendment for Basanty.*

Mayor Kennedy opened the public hearing for application ZA-05-01: Monterey-Alcini. No comments being offered, the public hearing was closed.

Interim City Attorney Siegel stated that staff will include the comments from the first public hearing made by the two applicants as to the specifics relating to the zoning amendment application.

Planning Manager Rowe clarified that Mr. Alcini was the original applicant under the zoning amendment application. However, the zoning area has been expanded to encompass the intervening parcels. He said that it was staff's expectation that Mr. Basanty was also going to file an application this year. However, Mr. Basanty concluded that he did not have enough time to get his application ready to submit to the City, therefore, he did not file a zoning amendment application.

Council Member Sellers said that in reviewing the application, he felt it was an extension of a philosophical difference he has with the Planning Commission with regard to this particular issue. Although the parking waiver could have been potentially significant were it not for the evidence presented this evening, he felt the parking concern has been mitigated because the market would require parking spaces. Further, the Council has had the advantage of receiving a preliminary list of Measure C applicants submitting housing proposals today. He felt this was an impressive list, a cause for optimism, and that the Council's efforts to extend housing opportunities in the downtown have been successful. He said that in order for housing to impact the downtown area positively, it does not necessarily need to be located between Main and Dunne Avenues, off Monterey Road. He recommended the City encourage high density within this area as it makes sense to proceed with this type of development. He felt the concerns of the Planning Commission have been largely mitigated, and that the benefits to the community, in the long term, far exceed these concerns.

Mayor Pro Tempore Tate stated his agreement with the concern of the Planning Commission with regards to parking, but does not agree with their concern on the height of the buildings. He inquired whether the Council can approve the zoning amendment application with an asterisk to the CC-R zoning district that would require parking, or a way to codify what has been done.

Interim City Attorney Siegel indicated that the Council would end up having different zoning districts with separate requirements. This procedure would not allow the Alcini property to proceed in this Measure C competition.

Mayor Kennedy shared Mayor Pro Tempore Tate's concern and suggested that the Council make a strong statement that it requests these properties include guest parking as indicated by the property owners. With the comments as expressed by Council Member Sellers, he felt these projects fit the goals

of what the Council is trying to accomplish with the downtown vertical mixed use, and furthers the goal of making the downtown alive and vital. He stated his support of these projects.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1740, New Series, Extending the CC-R Zoning District South of Dunne Avenue.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1740, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL, R-2 (3500) RESIDENTIAL AND CG, GENERAL COMMERCIAL TO CC-R, CENTRAL COMMERCIAL/RESIDENTIAL FOR TWENTY-NINE PARCELS TOTALING 13.25 ACRES LOCATED AT THE SOUTHEAST CORNER OF EAST DUNNE AVENUE AND CHURCH STREET AND SOUTH SIDE OF EAST DUNNE AVENUE BETWEEN MONTEREY ROAD AND CHURCH STREET NORTH OF BISCEGLIA AVENUE. (APNS 817-01-018 thru 022, 026, 031 thru 039, 045, 046, 050, 051, 053 thru 057, 059 thru 064), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Council Member Sellers indicated that he met with Mr. Alcini three or four years ago. He said that the Alcini family had the opportunity to make a significant amount of money by developing a standard strip commercial development on their property. Being long time residents who care about the community, they decided to take this more difficult and arduous route to do something that would be far more significant. He felt the Alcini family should be commended and thanked for their patience and vision in pulling these applications together.

#### **14. APPLICATION GPA-05-01: AMENDMENT TO THE CIRCULATION ELEMENT FOR THE MADRONE PARKWAY EXTENSION**

Planning Manager Rowe indicated that the adoption of the circulation element in 2001 included the proposed extension of Madrone Parkway, across the Union Pacific railroad tracks. The extension would serve as a connection between Hale Avenue/future Santa Teresa and Monterey Road, and between Monterey Road and Butterfield Boulevard. He informed the Council that in 2002, the City made an application to the State Public Utilities Commission (PUC) to secure an at grade crossing for the Madrone Parkway extension. At that time, there was also a proposal to construct a parochial high school on 30 acres, opposite the existing Madrone intersection. This project proposed to build the road to the railroad tracks and that the City would complete the crossing to make the connection to Monterey Road. He stated that both the PUC and Union Pacific Railroad strongly objected to the application and cited safety concerns in creating a new at grade crossing. The PUC suggested the City conduct a study to look at alternatives to the Madrone Parkway crossing. In 2004, the City commissioned a study prepared by Fher and Peers. The study identified three alternatives to Madrone Parkway. He informed the Council that staff met with representatives from the PUC, VTA and Union Pacific Railroad recently, in conjunction with a project that VTA is undertaking to extend double tracks from San Jose, south of the Tilton Crossing and picking up again south of Morgan Hill to Gilroy. He informed the Council that

the PUC and Union Pacific have reversed their decision, and that they would allow for an at grade crossing at Madrone Parkway; providing that safety fencing is installed and the City plans for future grade separated crossings. With the change in position by the PUC and Union Pacific, he recommended that the Madrone Parkway crossing be kept in the General Plan. He said that one item the City has to do, in the foreseeable future and possibly long term, is to keep the Tilton Avenue crossing open. He indicated that the City has, in its CIP budget, funding to install safety improvements as was done on Masten Avenue. He recommended the Council conduct the public hearing and that a motion be made to table this item. Staff will return to the Council with the same action that includes an amendment to map 4, circulation plan exhibit, to show the Tilton crossing remaining in place.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Tabled** this item.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **15.     POTENTIAL MORATORIUM ON CELL TOWER SITING**

Program Manager Eulo informed the Council that the Planning Division of the Community Development Department has included, in this year's workplan, adopting a new ordinance that would regulate the siting of cell towers. At the September 19, 2005 meeting of the Utilities & Environment Committee, the Committee took up the topic, upon learning that there was a potential for additional cell towers to be sited in the community. The Committee asked staff to bring to the Council a recommendation for a temporary moratorium on the siting of additional cell towers. He informed the Council that there are currently 10 different cell tower facilities in Morgan Hill. There are 2 current applications on file at City hall and that since the staff report has been written, another application has been filed for a conditional use permit (CUP) for an additional cell tower facility. He indicated that the Committee is recommending that the Council request the city attorney prepare a moratorium ordinance.

Council Member Grzan clarified that the moratorium would affect new cell tower installations, and that upgrading existing cell towers would not be affected by a proposed moratorium.

Planning Manager Rowe addressed the three applications submitted to the City. He indicated that one application would add another mono pole to an existing pole located adjacent to Mervyn's. Staff is recommending that the applicant collocate a pole on an existing site where Extended Stay is located as the site was designed to collocate with other providers. The Madrone Parkway water tank area has a tower with a number of installations on it and is 116'9" tall; adjacent to the Paramit property. The third application would be a new antennae mounted to the exterior wall of a motel on Condit Road, near Highway 101.

Council Member Grzan stated that the Utilities and Environment Committee has been studying this concern since the early part of this year. He said that the first proposal brought before the Committee

was more cosmetic in nature, and did not deal with the placement away from public facilities. He said that staff has included cell towers as part of the Planning Commission's workplan to address the concerns raised by the Committee. He noted that earlier this year, the Council read an announcement in the newspaper that one of the local airway vendors wanted to place a tower on one of the City's park sites without notification to the City. The announcement was made as a compliance issue; raising concerns. He indicated that he received a number of e-mails and phone calls from residents about the placement of cell towers in public facilities. He noted that the City does not have an ordinance in place to address the location of cell towers. He said that there is a perceived threat, by the public, on cell towers. He indicated that it is a suggestion of the Committee that the City consider a moratorium on new installation of cell towers until such time the Council has the opportunity to review a policy.

Mayor Kennedy said that additional concern was raised following the Committee's meeting. He stated that he was approached by several individuals who are concerned that the City may be too restrictive, especially if the Council was to adopt an ordinance similar to the one adopted by the City of Gilroy. He suggested the Council consider appointing a citizen task force, including 1 or 2 planning commissioners, to participate so that they can be involved in the process. He recommended the citizen task force prepare a white paper/report to present to the Committee. This would allow the opportunity to air all issues associated with cell towers. He recommended that citizens of the community be included in the task force as well as individuals with knowledge/expertise in this field who are Morgan Hill residents.

Mayor Kennedy opened the floor to public comment.

Scott Dunham, Development Manager for T-Mobile in the South Bay Area, stated that it was his belief that the three applications in process are all T-Mobile applications. He noted that Council Member Grzan mentioned that there was a perceived threat to the community. He requested that Council Member Grzan elaborate on this perceived threat.

Council Member Grzan stated that members of the community believe there is a potential health hazard associated with cell towers.

Mr. Dunham stated that the issue of health concerns is an issue prohibited from being cited by the 1996 Telecommunications Act. He stated that PCS communications has been available in Europe since the 1970s, but that it did not become available in the United States until 1996 as the FCC had been conducting extensive testing before allowing licensing in the United States. At the time the FCC introduced the Telecommunications Act of 1996, after having conducted extensive studies, health concerns were strictly prohibiting from being cited by communities. From an ordinance stand point, he wanted to make sure the Council is aware that while this may be a perceived threat in the community, the FCC has addressed the concern.

As far as aesthetics is concerned, Mr. Dunham stated that T-Mobile wants to be good neighbor in the community. He said T-Mobile tries to use existing structures, flush mounted antennas to the side of hotels which offer substantial height as opposed to building a new pole, and collocating with competitors, where possible, providing that the pole is sound enough to do so. T-Mobile will also build sites in areas requested by jurisdictions in order to accommodate future collocations. He indicated that he would volunteer his services, from a telecommunications stand point, in the drafting of a future

ordinance to include input from the telecommunication side. He said that T-Mobile may be able to provide the City with some ideas on ways it can utilize existing structures. He indicated that T-Mobile has the ability to use stealth technology; building sites that resembles trees, construct antennas on church steeples, etc. He indicated that should a moratorium be put into place, it would place at least a six month delay on the ability to build the three sites. If the ordinance is not completed by spring, it would further delay the approval of the three applications; a concern to T-Mobile. He noted that ATT and Cingular have merged and have become one company, and that T-mobile has to try and keep up with this merger. Keeping T-Mobile from being able to build in a market where Cingular already has a strong presence is highly detrimental to being able to provide fair and adequate competition.

Council Member Sellers noted that the City of Gilroy has adopted an ordinance and that health concerns were often cited as one of the reasons for restrictions. He inquired whether Mr. Durham was familiar with Gilroy's ordinance regulations.

Mr. Dunham responded that he was recently transferred to T-Mobile from another market. Therefore, he has not been in the bay area long enough to become familiar with Gilroy's ordinance.

Audrey Smith indicated that she submitted two of the applications being discussed earlier. She stated she has worked closely with planning staff that have provided a lot of good input. She stated that the two applications are going through the CUP process. She noted that the CUP application has a provision that allows the planning department to request additional documents, as deemed necessary. She informed the Council that planning staff have requested that she conduct a third party health study. She has completed this study and that it is available to the public. She stated that other documents can still be required as it is an open ended provision by the planning department. She said that she would be happy to conduct any additional studies the planning department deems necessary. She felt that a moratorium was a drastic measure to a concern that can easily be addressed with the existing application process.

No further comments were offered.

Council Member Carr noted that a conditional use permit requires review and a public hearing before the planning commission.

Mayor Pro Tempore Tate stated that it was not clear to him what the recommendation does to the three existing applications as they apply to existing locations. He noted that it was being recommended that existing facilities be exempt from the moratorium.

Council Member Grzan clarified that he is recommending that existing sites and modifications to existing sites be permitted under the moratorium. However, new cell site locations would be prohibited until such time the City has formulated a policy on their placement.

Mayor Kennedy expressed concern that existing sites may grow with clutter. He felt that as more and more antennas are added to existing sites, you may end up with a monstrosity of different antennas on a landmark such as El Toro or Knob Hill. He expressed concern with aesthetics in allowing a clutter of antennas.

Council Member Sellers felt that this was an issue that could be addressed by a task force and that the appointment of a task force to study the issue makes sense. He noted the City has three applications that are under the assumption that rules are in place. He recommended that the three applications be allowed to go through the process in fairness and equity. Although he understands the perceived health concern, he too had a difficult time discerning any real health concerns at this time. Should a subcommittee be formed, he recommended they address health and aesthetic concerns, and that an overall policy direction be brought forward for Council consideration. He further recommended that the City look at how an ordinance may be addressed to meet the City's concerns; doing so in a way that is less arduous/difficult for the applicant and staff. He stated that he was reluctant to impose something at this time because it was his belief that it would be of minimal impact. However, he felt that having a full airing and establishing a task force is the right way to proceed.

Council Member Grzan said that by not adopting a moratorium, the City would allow cell towers to be built in the community regardless of public concerns, and what other communities have done. He felt the City may put this community at risk. He indicated that he is proposing a moratorium and that the task force would develop a policy as quickly as possible to present to the Council for consideration. This would demonstrate to the community the Council takes their concerns seriously and that Council members will not make its own assessments on cell towers. He recommended the Council direct the City Attorney return with a moratorium for Council consideration at a later date. He felt the Council would receive a number of phone calls and concerns from the community should the Council not take action at this time.

Mayor Pro Tempore Tate said that he has heard Council Member Grzan state that current/existing sites would be exempt from the moratorium, and that he has heard Mayor Kennedy state that it would only be the current applications that would be exempt. He was unclear as to the recommendation by the Committee. He stated that he likes the idea of exempting new applications from the moratorium, but that they would not be exempt from the CUP process, or the public hearing process. He noted that the applicant would need to address aesthetic issues and concerns.

Council Member Grzan did not believe there were any applications in process for new sites when the Committee first took a look at the issue. The Committee understood that there were applications for modifications to existing sites.

Interim City Attorney Siegel said that should the Council proceed with a motion; the motion will need a lot of certainty as to what the moratorium applies to. He said that definitions of new facilities would need to be clarified. He stated that a moratorium would need to return to the Council in ordinance form. The Council will need to decide whether there will be a public hearing with the initial adoption of the ordinance. He informed the Council that in order to pass a moratorium, a four-fifths vote would be required; not a simple majority vote.

Council Member Carr said that in reading the staff report, it was his understanding that staff would return to the Council with an ordinance in the spring. He inquired whether it was the Committee's concern that there would be a rush on cell tower sitings in the next 6-8 months or was the concern about the public reaction from an operator who incorrectly noticed the public that they were going to place a

cell phone tower in a public park. He did not believe the Planning Commission or the Council would approve such a request.

Council Member Grzan indicated that there are 10 cell tower sites in the community at this time. The City is seeing a 30% increase in cell tower applications; one application is a new site and two applications are for existing sites. He noted the Council has heard from members of the public who have come before the Council and expressed concern about cell towers prior to the announcement that some provider was going to place a cell tower in a city park. He felt the public would like to see a policy put into regarding the placement of cell towers as soon as possible

Mayor Kennedy said that this is primarily a health and safety concern that is driving him to want this issue addressed quickly. As scheduled, it is not known what will take place in the six intervening months. He felt the City needs to do something to ensure the community is protected and the City is doing the right thing during the interim six month period. He felt a moratorium would address this concern.

Interim City Attorney Siegel stated that cities in California and throughout the United States have been preempted on health issues. He stated that the discussion of these issues can jeopardize an otherwise valid moratorium on aesthetics, siting, and other issues. Therefore, the findings will not come from his office for a moratorium concerning health issues because there is preemption on local entities regarding this issue. He agreed that this is a big concern not only in this community and other cities, but that the federal government has tied cities' hands on this issue. He said that under the circumstances that were addressed by Council Member Carr, there is an application that may have caused a low level of concern to be a great concern. He said that there is an examination of the problem to find out whether the concern is real, or if there are other ways to handle the concerns such as changing the ordinance. He noted that cellular phones are a relatively new technology and that there are changing laws that regulate them. He said that a court overturned San Diego's cell phone regulations; stating that they were so complicated that a court could not enforce their regulations. He stated that the Council has absolute authority over cell tower sitings on City property (e.g., parks, libraries, city hall, etc.). Therefore, cell towers may not be allowed by city councils as long as there is not a form of discrimination in the decision making process. This leaves the issue of private sites. He said the Council needs to decide whether a true problem exists that is best solved by placing a moratorium that would shut things down or whether the CUP process is appropriate for now; looking at other cities' ordinances and receiving input from citizens/industry. He noted that it is always the bad project that stems the Council's review and that the Council has to decide whether there truly is a problem that merits shutting down the process. The question is whether the CUP is working in a way that is acceptable to the Council. If the CUP is working and someone needs to review the ordinance, the moratorium may not be the correct process to take. If the CUP is not working, the correct remedy is to stop the process.

Council Member Grzan did not believe the City has a cell tower siting policy in place for City planners to use in the review of cell towers at this time that addresses aesthetics, its placement, etc.

Interim City Attorney Siegel indicated that the CUP is not an administrative permit, but that it requires a discretionary review by the Planning Commission.

Planning Manager Rowe informed the Council that an applicant is required to file a request for a CUP application that requires Planning Commission approval. As the City approved different sites, over time, staff has built on experience that addresses aesthetics and minimizes visibility. Staff has put together an outline for an ordinance that was presented to the Planning Commission in November 2004 that deals primarily with aesthetic issues and would simplify the process for cell sites in non residential areas. The outline uses stealth techniques to minimize visibility. In residential areas, public hearings would be required as part of the CUP process. He stated that as staff has gained experience over the years with the siting of cell towers, staff has addressed the requirements for a report to address the amount of electromagnetic fields that may emanate, and that they are well within the prescribed limits of the FCC guidelines. The City requires that field measurements be conducted on sites where they collocate with existing sites to look at the cumulative affects the site is generating in the field of EMFs. He stated that these conditions, as well as safety provisions that deal with the equipment buildings in terms of fire suppression and other things, have been included as standard conditions and built upon. Absence an ordinance, staff has a list of standard conditions that it imposes on cell towers, including field measurements to make sure the sites are operating safely, within the FCC limits.

Council Member Grzan stated the Committee believes a moratorium is an appropriate action to take in order to give the City time to evaluate a policy as it governs cell tower placement. He inquired if staff recollects whether the Committee's discussion was to regulate new sites or sites that were in process of an application.

Mr. Eulo did not recall the Committee discussing a distinction between new or existing cell tower sites. It was his recollection the Committee's discussion was in general concept of a moratorium to stop additional sitings.

In response to Council Member Carr's question, Planning Manager Rowe did not recall the Planning Commission denying a CUP for a cell tower. He informed the Council that the Planning Commission requested a policy or ordinance before they would entertain a new cell location, thus the reason for presenting an outline for an ordinance last November. He indicated that the Planning Commission felt the outline addressed the aesthetic siting concerns and were supportive if it were incorporated into an ordinance for adoption. He clarified that the Planning Commission uses this outline as an unofficial way of addressing the location of cell towers until such time the Council adopts an ordinance. He said that certain aspects of the outline will be incorporated into the ordinance to be presented to the Planning Commission and City Council.

Mayor Kennedy felt that there were two issues before the Council: 1) would it make sense to revisit this area and appoint a seven member task force consisting of community members, and individuals with expertise in this area? The task force would take a look at this issue, including the Planning Commission in the process. The task force would return with some standards for Council consideration. 2) Does the Council want to establish a moratorium in the meantime or make a policy statement in the interim?

Mayor Pro Tempore Tate said that the idea of a citizen task force was not part of the staff report. He noted the Committee wants to move quickly. Now, he hears a recommendation to appoint a seven member task force and felt this would slow down the process. He heard it stated that Council can use some aspects of the existing process. He did not know how much staff time and demand on a task force



this issue would take. He stated he did not have enough information on the tradeoffs to justify the establishment of a task force versus the track the City is on. He did not know whether it is proposed to exclude current locations or current applications. He stated that he needs a solid recommendation presented.

Mayor Kennedy clarified that he was not suggesting that a task force would move quicker, but that it would involve the public in the process and that it would become an educational process for the Council, the community, staff and the planning commission. He wanted to make sure that whatever actions the Council takes, they are appropriate ones.

Mr. Dunham said that as part of the CUP process, he provides an EMF report regarding the electromagnetic field output of the equipment at the time of application. Once the installation is complete, an EMF report is provided as to the actual measurement at the equipment. He stated that this is a requirement under the CUP process. He stated that radio stations utilize thousands of watts; where cell towers use 120-500 watts, depending on the cell site installed. Therefore, cell antennas are a mere fraction of the energy currently put out by am/fm stations; noting that there is no movement to take radio stations off the air. He said that there is a specific reason for the three applications by T-Mobile; the recent ATT buyout by Cingular. Prior to this, T-Mobile had an agreement with Cingular and other sites for the ability to roam on each others' networks without incurring roaming charges to customers. When Cingular bought out ATT, who had a good presence in the northeastern United States, they no longer needed the deal with T-mobile and cancelled the agreement. Therefore, T-mobile is no longer able to roam in the west on Cingular sites. He stated that it is not a mad rush for locations, but a business reason as the sites they previously used to roam have disappeared. He said that T-Mobile submitted applications underneath the guidelines and rules in place today. To change the rules in midstream is creating a barrier to the market.

Council Member Sellers felt the suggestion of having a separate task force may be the best approach within the confines of the Committee. The Committee could invite Mr. Dunham, planning commissioners, representatives from the public and individuals who have contacted the City Council. Over the course of this meeting and/or subsequent meetings, the Committee can come up with a policy on the best way to speed up the process, using less staff resources; while at the same time giving the public opportunities to participate. He did not believe it made sense to institute a moratorium at this time while the City goes through this process. He felt the Council has the duty to point out that the City has an exhaustive process in place. It is a process that is far more arduous and extensive than most cities have in place. While he understands the concerns for health, he noted that he has not been presented with evidence of this fact. However, evidence has been presented by public agencies that have spent an exhaustive amount of time on this issue. He stated that he would be comfortable using the FCC guidelines as they have the best scientific evidence.

Mayor Kennedy felt that Council Member Sellers' suggestion of taking this item back to the Committee may be a good approach to take.

Council Member Grzan stated that the concern about cell towers is not unique to Morgan Hill, Gilroy, or any community in California/the nation. He requested the City hold off on approving any new cell antennae/tower installations until such time the City has adequate time to review a policy for the

community. He would like to prevent a cell tower being located adjacent to a school, park or public facility where individuals have concerns. He was not advocating or stating that cell towers emit harmful rays. By adopting a moratorium, the Council would send a message to the community that it is taking a conscientious look at this issue and that it would have a cell tower policy in place that would be workable/doable, would address citizen concerns, and meet the needs of Morgan Hill residents. He felt allowing the three applications to proceed would send a message to the community that the City will allow cell towers to be installed, regardless of concerns. He was taken back by the fact the Council does not want to take an assertive approach to this issue because the City does not have a good policy in place. He stated that he would not vote to approve anything other than a moratorium because it was his belief it would meet the City's needs at this time.

Mayor Kennedy felt the Council has heard additional information this evening that addresses some of the concerns and hears differing opinions on the Council. Therefore, he recommended that this item be sent back to Committee. The Committee is to take another look at the issue and see if it can come up with something more specific to bring back to the Council

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council, on a 4-0-1 vote with Council Member Grzan abstaining, **Referred** this item to the Utility and Environment Committee for further review. The Committee to **Return** to the Council with a specific recommendation.*

Mr. Dunham reiterated his offer to provide industry input in helping the City draft an ordinance. He would also make himself available at any community outreach meeting(s) the Council may wish to have with its constituents.

## **16. LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE RESOLUTIONS**

Mayor Kennedy felt that most of the League of California Cities' resolutions were straight forward except for one that is to be presented on the floor relating to Proposition 76.

Council Member Sellers noted that the Council received additional information on the Dais this evening. The information presented an outline from board members of the League of California Cities. The correspondence states that Proposition 76 is a highly partisan and controversial issue. He noted that it has been a policy of the League of California Cities to abstain from highly partisan issues. He stated that there has been discussion from some factions that they would like to see this Proposition brought up before the Board. Despite the Board's desire to remain out of the issue, it is being requested that they weigh in.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **directed** the City Council's voting delegates to continue to take the "No Position" of the Board of Directors of the League of California Cities regarding Proposition 76.*

**Action:** *It was the consensus of the Council to **agree** with the recommendations presented by the Council Committees.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **17. MAYOR, COUNCIL MEMBER, AND REDEVELOPMENT AGENCY BOARD MEMBER COMPENSATION**

Finance Director Dilles indicated that during the budget deliberations, the Mayor suggested that the Council may wish to consider adjusting Council pay that has not been adjusted in some time. On August 17 and August 24, the Financial Policy Committee considered ways in which Council pay might be adjusted. He indicated that the Council currently receives \$300 per month, the salary in place since 1986. He noted that the mayor is entitled to \$800 per month, the amount paid since 1996. He stated that government code provides that for cities ranging in population from 35,000-50,000 the Council pay could be as much as \$400/month. An alternate methodology described in the government code states that the Council could increase pay by 5% per year since the last time the Council members' pay was adjusted. As the Council member's pay was last adjusted in 1986, applying 5% per year from that time, could amount to as much as \$722 per month. He noted that the government code states that the Council can only implement salary changes affective with the beginning of new council member terms. This would be post the November 2006 election. The Financial Policy Committee asked if it would be possible to implement council pay at the beginning of a new term and that it be phased in as each new term became available (e.g., 2006 or 2008). He stated that the answer is no, all Council members' pay would need to be adjusted at the same time and that it could be as early as post November 2006 or the November 2008 election. He informed the Council that there is another area for compensation in Redevelopment Agency Board pay. He stated that the Health and Safety code provides that Redevelopment Agency Board members can be paid as much as \$30 per meeting for a maximum of four meetings a month; up to \$120 per month. He indicated that there is no requirement that this be implemented at a later date. He informed the Council that they can be reimbursed for City expenses as long as the budget accommodates actual expenses incurred.

Mayor Kennedy suggested the Council and Redevelopment Agency Board authorize the \$30 per meeting stipend and that the Council's salary be increased to \$400 per month, effective December 2006, following the next election; increasing the salary every two years based on the cost of living thereafter.

Mayor Pro Tempore Tate noted that the Council recently authorized two new police officers. He felt that there were better ways to use monies. He said that when council members took their elected seats, they did so with the understanding that they would receive token pay. He did not see a justification for increasing council members' or the mayor's salary, and sees a lot of other justifications for the use of City monies. He recommended that Council pay be left as is and not make changes.

Council Member Grzan stated his concurrence with Mayor Kennedy's proposal as it would align compensation with other cities. He felt the proposed increase in compensation would be minimal, and would not have a significant impact with respect to the City's budget and budget issues. He stated that the increase in compensation would help offset other costs such as gasoline, technology or other charges and fees. He indicated that he has not submitted for mileage or other reimbursements since he has been

in office. He noted that the Council approved significant increases to city staff and their budgets this evening. He would support increasing the Council's salary to cover the cost of living and other aspects of serving as a council member as it would be consistent with what other cities are doing.

Council Member Sellers said that given the City's financial situation, he was in between the two thoughts. He does not believe that the \$30 Redevelopment Agency pay makes sense. He recommended that any thought of increasing elected pay wait until after November 2006. He felt there should be a mechanism in place for a minor percentage in increase. He was not supportive of making the pay retroactive because prior Council members did not increase their pay for a reason. Should the Council agree to increase the salary to \$400 per month, he recommended the Council include a mechanism for a minor increase to be considered annually or every other year, subject to the approval of the Council. He did not believe that candidates took elected office to make money. Therefore, it would be unwise for the Council to move too far forward with increasing pay.

Council Member Carr said that this is a difficult question as it is a difficult time for the City, financially. He noted that the contracts approved this evening were modest in means and did not reflect significant increases for anyone. The contracts were the best the Council could do and that it was his belief the Council wanted to do more for its employees, departments and its constituents in terms of services. He did not believe the Council should take an action that would go into affect at this time; this includes pay for attending RDA meetings. He does not support retro active pay increases. He stated he would be willing to consider an increase in pay if it was beyond the November 2006 election as there are some things the Council is doing to help take care of the City's financial situation. If an increase in salary changes the current budget situation approved by the Council, he would not support it.

Mayor Kennedy noted that the existing ordinance establishes the mayor's pay at a flat dollar amount. The government code stipulates that the mayor is entitled to the same amount of pay as council members, plus whatever additional amount the council sets. Should the council move ahead to change salaries, he recommended that the Council be specific as to how much additional pay the mayor should receive. He noted that the ordinance does not spell out the mayor's pay that is equal to council member's pay and the additional mayor's pay. He suggested that a salary increase apply to both the council and the mayor after December 2006.

Finance Director Dilles clarified that the 5% per year, or the cost of living increase cannot occur automatically. It was his belief the Council would need to take action each time the adjustment is to be made, under the law.

**Action:**        *Mayor Kennedy made a motion, seconded by Council Member Grzan, to **Increase** Council Members' and Mayor's pay by the cost of living every two years after the election to take place in November 2006.*

Interim City Attorney Siegel requested clarification on the base the City would start from and from what point would the adjustment be made. Would the first adjustment be with the 2006 election? He indicated that staff would need to return to the Council with a document in written form.

Mayor Kennedy clarified that an increase in pay would be calculated from the cost of living accrued from the date the action goes into affect.

Finance Director Dilles inquired whether the Council was talking about the actual cost of living by an index or whether the Council was talking about the 5%. He noted that the law talks about up to 5%

Mayor Kennedy clarified that his motion addresses a cost of living increase.

Interim City Attorney Siegel said that staff would need to look into whether the CPI exceeds 5% and determine whether the City is capped at 5%. If the City is, staff would return with language that suggests CPI, unless otherwise capped.

Finance Director Dilles clarified that the percentage increase would normally be for a calendar year as stated in the government code. Therefore, the City would be looking at the cost of living increase for the calendar year.

Council Member Carr indicated that in order for the salary to take affect following the November 2006 election, the salary increase would need to be included in the Council's budget to be adopted in June 2006. He inquired whether the Mayor would be opposed to tying the increase to the next budget cycle following the election of November 2006.

Finance Director Dilles clarified that the Council would need to act and approve each increase prior to Council Members' terms starting, whatever the amount. Should the Council wish to have an increase to take affect in December 2006, it would have to take a vote prior to starting the term. He suggested that by October 2006, the Council vote on the increase and identify when the increase in pay would take affect. Should the Council wish to increase the salary again in two years, the Council would need to take a separate action for that increase.

Council Member Sellers suggested that the increase be affective January 2006 with the new Council to vote on the salary increase in December 2007.

Interim City Attorney Siegel said that if an approval is not made before the next election, the increase, as suggested by Council Member Sellers, would not occur until after the 2008-election.

**Action:**        *Mayor Kennedy and Council Member Grzan **amended** their motion to clarify that the increase in council salary is to be affective after the November 2006 election; using the cost of living as a starting point for the calculation when the policy statement goes into affect.*

Council Member Sellers recommended that the motion be amended to stipulate that the increase would be subject to the approval of the Council prior to it taking affect.

Interim City Attorney Siegel felt that Council Member Seller's recommendation would negate the raise until 2008.

Council Member Sellers stated that he would like a mechanism in place such that the next Council would vote on the salary increase.

Council Member Carr noted that a salary increase is reviewed/approved as part of the budget.

**Vote:**            *The motion carried 4-1 with Mayor Pro Tempore Tate voting no.*

Council Member Grzan recommended the Council raise its compensation to \$400 per month and that this amount be used as the base as it is the allowable rate based on the City's current population. He felt that this would be a consistent with what the law allows.

**Action:**            *Council Member Grzan made a motion, seconded by Mayor Kennedy, to **increase** Council pay to \$400 and to use this as the base amount to calculate the cost of living increase. The motion failed 2-3 as follows: AYES: Grzan, Kennedy; NOES: Carr, Sellers, Tate.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

City Manager Tewes said that a number of Council members have requested that staff provide background information about the potential for a special meeting of the Council for the purpose of conducting a public hearing in considering applications for the shopping center at the corner of Cochrane and Highway 101. In the materials presented to the Council, staff indicates that this is a complex project and that there are a series of meetings being scheduled by the Planning Commission. Staff believes that the issues would be complex enough that they would require more than the usual staff review, input and analysis. In order to make sure the Council has all the background and documentation needed, staff believes that it cannot bring this item to the Council in the first meeting in November. Staff is suggesting a special meeting be held on November 9. However, he noted that the Council has called a special meeting on November 9 for the purpose of meeting with Council committees and commissions to conduct training on the Council's adopted ethics policy.

Mayor Kennedy suggested that the Council conduct the shopping center workshop from 5:00-7:30 p.m.; pushing the ethics workshop to 7:30-9:30 p.m.

Mayor Pro Tempore Tate objected to delaying the start time for the ethics workshop as the Council has told its committees and commissions that ethics is important to the Council and the Council has already asked them to reserve this time. He did not like the message it would send, should the Council delay the meeting.

Council Member Carr agreed to meet at 5:00 p.m. for the shopping center workshop as it would be easier for the Council to modify its schedule versus requesting every commissioner to modify their schedule.

Council Member Grzan indicated that he could not be in attendance at 5:00 p.m.

City Manager Tewes clarified that this would be a public hearing to consider the various ordinances and resolutions presented by this application. As an alternative, a special meeting could be held on Thursday, November 10. In any event, the City needs to give the public adequate notice of when the Council would be considering these applications.

Council Member Grzan stated that he could not be in attendance earlier than 5:30 p.m.

Council Member Sellers indicated that should a meeting be scheduled for November 10, it is critical that a second hearing date be identified. He agreed the Council cannot push back the public hearing past 7 p.m. Therefore, the only other option would be to carry the public hearing to a subsequent meeting, if necessary. He stated that he was going to suggest holding a meeting on a Saturday morning as this may be a difficult discussion and that a Saturday may give the Council more time to discuss the project.

City Manager Tewes said that the application includes a planned unit development zoning ordinance along with a series of other actions. He noted that ordinances require introduction and adoption at a subsequent meeting. He indicated that the subsequent meeting cannot take place less than five days from the date of introduction.

Interim City Attorney Siegel stated that there has to be five days between introduction and adoption of an ordinance. Holding a meeting on a Saturday would only give the ordinance four days between readings. He informed the Council that there is no legal requirement to have the hearing held by November 16, 2005.

**Action:** *It was the consensus of the City Council to **Call** a Special Meeting for Wednesday, November 9, at 5:00 p.m. for the purpose of conducting a public hearing on the shopping center project. The Ethics workshop is to be held on Wednesday, November 9 at 7:00 p.m., as originally scheduled.*

#### **CONTINUED CLOSED SESSION ITEM**

It was noted that the remaining closed session item could be deferred to a future meeting date.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:32 P.M.

#### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**



# **REDEVELOPMENT AGENCY STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

## **SALE OF BMR HOME LOCATED AT 324 VIA NAVONA**

### **RECOMMENDED ACTION(S):**

- 1) Use up to \$20,000 to complete any necessary repairs for this BMR unit.
- 2) Authorize staff to sell this BMR unit to a median income BMR buyer at the established median income BMR home price.

**Agenda Item #19**

**Prepared By:**

\_\_\_\_\_  
**BAHS Housing Rehab  
Coordinator**

**Approved By:**

\_\_\_\_\_  
**BAHS Director**

**Submitted By:**

\_\_\_\_\_  
**Executive Director**

**EXECUTIVE SUMMARY:** On February, 23 2005 the Agency approved the purchase of the BMR home located at 324 Via Navona. This home was in violation of BMR program guidelines and the owner was in default with the lender. Buying the home was the best way to resolve the over-encumbrance issue and maintain the BMR restrictions on the unit. The Agency has purchased the home for \$210,000 and a detailed evaluation of repairs has been done. The February 23, 2005 staff report allowed for the expenditure of \$10,000 in repairs and set the sales price not to exceed \$220,000. This is \$28,000 higher than our current low income home prices for homes of this size. Staff would like the option to bring the home to median income home condition and sell it as a median income BMR home. The home would then remain in the City's BMR program as a median income unit with the standard forty five year resale restriction. Median income homes usually have some higher quality materials and upgraded items over the low income units. As a result staff is requesting up to \$20,000 for repairs to upgrade the home to median home standards. The current median income BMR home price is \$279,110 which would cover the costs of acquiring and reconditioning the home.

**FISCAL IMPACT:** There are sufficient funds available in the BAHS Housing budget (327).





## **REDEVELOPMENT AGENCY STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **LOAN TO COMMUNITY SOLUTIONS FOR THE REHABILITATION OF THE LA CASA DEL PUENTE TRADITIONAL SHELTER FOR THE MENTALLY DISABLED**

#### **RECOMMENDED ACTION(S):**

1. Approve a loan of up to \$102,000 under the Agency's Housing Rehabilitation Loan Program to Community Solutions.
2. Authorize the Executive Director to do everything necessary to prepare and execute loan documents.

**EXECUTIVE SUMMARY:** Community Solutions is a nonprofit organization that provides human services in the South County area. They own and operate the La Casa Del Puente transitional shelter for mentally disabled persons. This shelter is located in Morgan Hill at 17415 Depot Street and houses up to ten residents at a time. Residents stay here for up to four months while receiving counseling and other services (see attachment for more details).

Community Solutions also owns a duplex located at 150 and 154 Main Street. The Agency loaned \$70,000 to Community Solutions at 3% simple interest back in 1990 with a term of 30 years (due 2020) with payments fully deferred. They are selling this property so the loan will be paid off early. Community Solutions is requesting the Agency waive the interest on this loan so that they can use the savings to help fund services they provide. Staff recommended a different approach and has negotiated with Community Solutions to use the principal and interest paid from this loan (\$102,000) to fund a new loan for the La Casa Del Puente transitional shelter. Proceeds from this loan can also be used to finish the La Isla woman's shelter project.

The La Casa Del Puente home is a twenty year old duplex that needs a total renovation with cost expected to be about \$92,000. La Isla requires about \$10,000 to finish some landscaping improvements and other miscellaneous repairs. All of these repairs fall under our standard program guidelines. The interest rate generally is 3% for low income rehab projects. However, as Community Solutions has limited resources, we recommend a deferred, zero interest loan with the principle due upon the sale or change of use of the property. As long as Community Solutions continues to use the property for its stated uses, the loan would be fully deferred.

**FISCAL IMPACT:** There will be no sufficient impact to the BAHS Housing budget (327-7100-86420). The funds used for this loan are specifically earmarked for rehab loan purposes. We were not expecting repayment of the 150 Main Street loan till 2020, so re-loaning funds does not negatively affect our current fund balance. The key difference between the loan structures is that interest is not collected on the new loan and the unknown repayment date. The loan will be secured with a lien on the property.

Agenda Item # 20

Prepared By:

BAHS Housing Rehab  
Coordinator

Approved By:

BAHS Director

Submitted By:

Executive Director



## **REDEVELOPMENT AGENCY**

**MEETING DATE:** *October 19, 2005*

**Agenda Item #21**

**Prepared By:**

**BAHS Analyst**

**Approved By:**

**BAHS Director**

**Submitted By:**

**City Manager**

### **AUTHORIZATION TO APPLY FOR AND ACCEPT A CalHFA HELP LOAN FOR HOUSING PROJECTS**

#### **RECOMMENDED ACTION(S):**

Adopt a resolution authorizing the Executive Director to:

- 1) Apply to the California Housing Finance Agency (CalHFA) "HELP" program for a loan of up to \$1 million; and
- 2) Do everything necessary to accept and execute the loan with CalHFA, if awarded.

#### **EXECUTIVE SUMMARY:**

In 2000, the Redevelopment Agency ("Agency") received its first CHFA (now CalHFA) HELP loan of \$1 million. This loan was used to help pay the acquisition, predevelopment and relocation costs for the Jasmine Square housing project. The Jasmine Square HELP loan was recently repaid and the funds were used as part of a \$1.9 million Interim Loan to the Royal Court project. A second HELP loan of \$900,000 was awarded to the Agency in 2003. It was also applied to the Royal Court housing project. CalHFA has modified its HELP program to allow agencies to apply for more than two loans. Staff would like to take advantage of that rule change to apply for a third loan during the current funding round.

HELP funds must be used to directly assist the development of affordable housing. The program has a "Loan-to-Lender" format which allows a recipient agency to either re-lend or directly utilize the funds for its own purpose. Loans are unsecured and deferred, but accrue simple interest at 3% per annum on amounts drawn. The maximum loan term is 10 years, but CalHFA may call all or part of the loan after a prolonged period of non-use. Awards of HELP loans will be announced in mid-January. CalHFA now requires agencies to adopt a resolution accepting the loan, and to submit it as part of the application.

The Agency is applying to use HELP funds for land acquisition, predevelopment and relocation costs related to both ownership and rental affordable housing projects. South County Housing (SCH) is currently working to develop a new affordable ownership housing project located on the southeast corner of Cochrane and Monterey roads (adjacent to EAH's Cochrane Village apartments). SCH is proposing to develop 95 affordable housing units on the property in conjunction with the market rate project being developed by South Valley Developers. If our application is successful, the HELP funds could be used to partially fund this project. This would "free-up" Agency 20% Housing Set-Aside Funds for other projects. The HELP funds would be paid back to the Agency when the permanent financing package is put into place. HELP funds could then be used in a subsequent Agency project. The Agency would secure the loan against the property. Any agreements with non-profits (like South County Housing) for the use of the HELP funds would be brought back to the Agency Board for final approval.

#### **FISCAL IMPACT:**

If a CalHFA HELP loan is awarded, the Agency would be responsible for repaying that loan and its accrued interest. However, repayments should come from the non-profit developers to whom the Agency had loaned the funds.

**RESOLUTION NO. MHRA-**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL AUTHORIZING THE EXECUTIVE DIRECTOR TO APPLY FOR AND ACCEPT A CALIFORNIA HOUSING FINANCE AGENCY (CalHFA) "HELP" PROGRAM LOAN OF UP TO \$1,000,000.**

**WHEREAS**, the Redevelopment Agency of the City of Morgan Hill ("Agency") desires to create a program to assist in purchasing, developing and preserving affordable housing projects within the Ojo de Agua Community Development Area; and

**WHEREAS**, a loan of up to \$1,000,000 from the California Housing Finance Agency (CalHFA) "HELP" Loan Program will provide interim low-cost financing for such a program; and

**WHEREAS**, funding from the CalHFA "HELP" Program free-up the Agency 20% Housing Set Aside Funds for other Agency housing programs during initial phases of CalHFA assisted projects; and

**NOW THEREFORE**, the Redevelopment Agency of the City of Morgan Hill does hereby resolve as follows:

**SECTION 1.** The Agency hereby authorizes the Executive Director to apply to the California Housing Finance Agency (CalHFA) "HELP" Program for a loan of up to \$1,000,000 for the purpose of purchasing, developing and preserving affordable housing projects within the Ojo de Agua Community Development Area.

**SECTION 2.** The Agency hereby authorizes the Executive Director to take all actions necessary to execute the loan agreement with CalHFA.

**PASSED AND ADOPTED** by the Morgan Hill Redevelopment Agency at a Special Meeting held on the 19<sup>th</sup> Day of October, 2005 by the following vote:

**AYES:**           **AGENCY MEMBERS:**  
**NOES:**       **AGENCY MEMBERS:**  
**ABSTAIN:**   **AGENCY MEMBERS:**  
**ABSENT:**    **AGENCY MEMBERS:**

**∞ CERTIFICATION ∞**

I, **IRMA TORREZ, AGENCY SECRETARY**, do hereby certify that the foregoing is a true and correct copy of Resolution No. MHRA- adopted by the Morgan Hill Redevelopment Agency at a Special Meeting held on October 19, 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ**  
**AGENCY SECRETARY**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: October 19, 2005***

**Agenda Item # 22**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1739, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.87 ACRES FROM COUNTY OF SANTA CLARA AGRICULTURAL ZONING (A-20) TO PLANNED UNIT DEVELOPMENT (PUD) ZA-05-10: CONDIT-KUBO (APN 728-17-011, -024, -025)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1739, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On October 5, 2005, the City Council Introduced Ordinance No. 1739, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: Kennedy; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment required. Filing fees were paid to the City to cover the cost of processing the applications.

## **ORDINANCE NO. 1739, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.87 ACRES FROM COUNTY OF SANTA CLARA AGRICULTURAL ZONING (A-20) TO PLANNED UNIT DEVELOPMENT (PUD) ZA-05-10: CONDIT-KUBO (APN 728-17-011, -024, -025)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Establish a Planned Unit Development pre-zoning designation for 19.87 acres of land located on the southwest quadrant of Diana Avenue and Condit Road. The Planned Unit Development zoning designation shall become effective upon annexation of the parcels to the City of Morgan Hill.

**SECTION 2.** An environmental initial study has been prepared for the proposed amendment and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Negative Declaration will be filed.

**SECTION 3. INCORPORATING THE MAP BY REFERENCE.** There hereby is attached hereto and made a part of this ordinance, a zoning map entitled "Exhibit A" Map Showing Pre-zoning Lands of Kubo Being a Part of Ordinance No. 1739, New Series, which shows the boundaries of the described parcels of land.

**SECTION 4. USE AND DEVELOPMENT STANDARDS.** There hereby is attached hereto and made a part of this ordinance Exhibit "B", which sets forth the text of the PUD zoning district and establishes the applicable use, development and performance standards to be applied to the properties as shown on the map attached thereto as Exhibit "A".

**SECTION 5. SEVERABILITY.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 6. FINDING OF CONSISTENCY WITH THE GENERAL PLAN.** The City Council hereby finds that the amendment established by this ordinance as herein described is compatible with the goals, objectives, policies and land use designation of the General Plan of the City of Morgan Hill. The Council further finds that the proposed amendment is required in order to serve the public health, convenience and general welfare as provided by Section 18.62.010 of the Morgan Hill Municipal Code.

**SECTION 7. Effective Date Publication.** This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 5<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of October 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1739, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of October 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



CITY OF MORGAN HILL  
Prepared by Community Development Department

## EXHIBIT A

ZA-05-10: Condit-Kubo/Patel



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**EXHIBIT B**  
**ZA-05-10**  
**CONDIT-KUBO PUD ZONING ORDINANCE**

**Area:**

The 19.87 acre area is shown on Exhibit A of this ordinance, which includes Assessor Parcel Numbers 728-17-011, -024 and -025.

**Purpose:**

The purpose of this city-initiated 19.87-acre Planned Unit Development (PUD) is to accommodate regional- and community-serving uses that typically require and benefit from exposure to and visibility from a freeway. The PUD is intended to accommodate primarily extensive retail, automobile dealerships and other uses for which there is market demand; and which generally would not choose to locate in the downtown or within the community shopping centers that exist in Morgan Hill, due to need for visibility from Highway 101 and larger-sized structures or facilities.

The PUD District will facilitate and promote coordination of design, access, use and other features associated with development of the properties within the PUD. While the District will allow diversification in the relationship of various buildings, structures and facilities, it will also ensure that careful site and architectural planning occur so that development projects reflect and incorporate appropriate standards related to the public health, safety and general welfare.

**Permitted, Conditional and Prohibited Uses Within PUD:**

**Permitted**

1. Motor vehicle, boat and recreational vehicle sales and service
2. Home furnishings
3. Electronics store
4. Appliance store
5. Office supply
6. Carpet and flooring stores
7. Offices, Professional Offices
8. Public and utility facilities

**Conditional**

1. Restaurants, sit down
2. Commercial recreation
3. Retail uses not listed as Permitted or Prohibited
4. Hotels/motels
5. Personal Services and Financial Services
6. Business and Trade Schools



7. Any other use which the Planning Commission finds to be similar in nature to the permitted and conditional uses, and that is not similar in nature to those listed as prohibited uses

**Prohibited**

1. Cinemas, Theaters, Nightclubs, Bars that are not associated with Restaurant
2. Convenience Stores
3. Fast Food Restaurants
4. Grocery Stores, Supermarkets and Drug Stores
5. Gasoline Service Stations
6. Residential uses
7. Small and Large Family Day Care Homes
8. Nursery Schools, Day Care Centers, Primary and Secondary Schools
9. Churches, Religious Buildings, Social Halls, Fraternal Organizations, Private Clubs
10. Hospitals, Medical Facilities, Medical and Dental Offices, Licensed Nursing Homes and Convalescent Hospitals
11. Mini Storage Facilities

**Development Plan Required to Establish PUD Development Standards**

The first applicant proposing to develop within this PUD District shall submit a proposed Development Plan for approval, and such request shall be in the form of an amendment to this PUD District. The amendment request shall follow the same procedures as established for zoning amendments, as defined and described in Chapter 18.62 of the Municipal Code. The PUD District Amendment shall define the general manner in which the PUD will develop; will establish minimum setbacks, maximum height and other development standards; and will include the information identified in Section 18.30.050 of the Municipal Code.

**Design Review and Approval**

All buildings proposed for development within the PUD shall be subject to the architectural and site review process, as defined in Chapter 18.74 of the Municipal Code.

**Design Guidelines and Performance Standards**

Development Plan and Architectural and Site Review approval shall be subject to finding that the proposed improvements are in substantial conformance with the following Design Guidelines and Performance Standards. A Performance Standard uses the word “shall” within the text of the standard and future developments must incorporate the performance standards; all other statements are considered Design Guidelines and the design review process will be used to determine substantial compliance with the Guidelines as a whole.

Architecture/Site Planning

1. The general aesthetic character of the building exteriors is to be designed to present a harmonious architectural theme that reflects high quality design.
2. Rooflines should be designed to create architectural interest and to “break” large structures into smaller perceived scales. While buildings should not be more than 3 stories tall, the maximum height established for the PUD should not restrict architectural flexibility in creating interesting buildings appropriate to planned uses. Roofs should incorporate a maximum of two varying roof types (e.g., hip, gable), or a minimum of two varying roof heights for flat roofed structures.
3. Walls of structures should incorporate alternating planes, by stepping or staggering setbacks and/or by recessing windows and entrances, to provide breaks in massing and architectural interest.
4. Doors and windows should enhance the design of buildings, such as by use of various sizes, shapes and/or repeating patterns that complement the overall theme of the building, and/or by use of accent trim or accent colored window framing.
5. The type and variety of materials and colors on exterior elevations should be selected to create a harmonious, interesting and well-designed building, which is neither visually monotonous nor visually overwhelming.
6. All exterior wall elevations visible from and/or facing public roadways, or key interior vehicular and pedestrian travelways, should have architectural treatment at a similar level of detail as the primary/entrance elevations for structures. Flat, void building surfaces without architectural treatment should be avoided, and even less visible elevations should reflect some appropriate level of design.
7. Facade architectural treatment shall be applied to all building elevations with the same degree of detail as the building entrance.
8. No franchise architecture that users construct in other cities is permitted. Franchise logos and other identifying design treatments need to be incorporated into designs that are created for and compatible with Morgan Hill.
9. The PUD and Development Plan design criteria shall be included within any CC&R’s that are created for properties within the PUD.
10. Buildings shall comply with ADA public access requirements, and path of travel from the public sidewalk shall be carefully integrated into the site plan.

11. Mechanical and utility equipment is to be located below the roofline or parapet wall and substantially out of public view, and not exposed on the wall surface of a structure. Location within the building or at ground level is preferred to roof mounting. When such equipment cannot be so located, all roof-mounted mechanical equipment or ductwork which projects vertically above the roof or roof parapet shall be screened by an enclosure which is detailed consistently with the building design.
12. Gutters and downspouts shall be designed elements of the project. Gutters and downspouts that are designed with parapet walls shall be located interior to the wall when adjacent to a roadway frontage. All other gutters and downspouts that cannot be located interior to the wall shall be treated to blend into the facade to which it is attached, unless used as a major design element, in which case the color shall be consistent with the color schemes of the building.
13. All outdoor storage of goods, materials or equipment must be identified on the site plan, and located within an area that is appropriately visually screened. The screening is to be designed as an integral part of the building design and site layout. Chain link fencing with wood inserts is not an acceptable manner of screening.
14. Trash enclosures are to be constructed of solid masonry material, designed compatibly with buildings on-site, and a minimum 6 feet in height with solid view-obstructing gates. Trash enclosures are to be located in inconspicuous locations.
15. Vending machines, newspaper racks, and similar coin-operated devices are allowed only within the interior areas of buildings.
16. Uses within the PUD that utilize shopping carts shall provide indoor storage of the carts and shall provide for collection areas throughout the parking lots.
17. The design of fences and walls must be compatible with the surrounding landscape and architectural concepts.
18. The practice of balanced grading should be reflected on proposed site and grading plans to the greatest extent possible.
19. A representative site plan for the entire PUD which illustrates building envelopes, parking areas, pedestrian access, landscaping, connecting driveways and walkways, reciprocal easements, sign location, storm water detention and other features is to be included in the development standards. Drawings of building elevations, which embody the style and design concepts for the PUD and represent the level of architectural quality to be achieved, shall be included.
20. Parking lots should be designed to include curb planters around trees, and existing trees should be retained where feasible to include within the development site plan(s).

21. Compressors are to be screened by a wall or fence and be located below the fascia and/or roofline of the building. Further, they shall be located on the rear or hidden side of the building and shall be painted to match the surface to which attached, if that surface is visible.

Parking and Loading/Circulation

1. Parking shall be screened from public view through the use of berming, hedgerow planting, shrubs, trees, fences or walls, or any combination thereof, provided that no more than 35% of the total screening shall consist of fences or walls. At time of installation, shrub plantings shall be minimum 5-gallon size, trees shall be a minimum 15-gallon, and berming/fences/walls shall be a minimum 3 ft. in height.
2. No angled parking or one-way drive aisles shall be utilized in the parking lot.
3. Parking areas shall be designed to include provision for pedestrian walkways to provide access to building entrances. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, narrowed roadway, or combination thereof. Walkways shall be provided through landscaped areas to protect landscaping from foot traffic damage.
4. Parking areas of adjoining property owners shall be located to utilize shared or reciprocal access and shared parking whenever possible.
5. Loading areas and docks shall be screened from view by a solid wall. The wall shall be architecturally treated and screened with landscaping.
6. Parking lots shall be designed to provide for safe and efficient movement of vehicles between properties by providing joint access easements and reciprocal easements wherever possible.
7. All employee and customer parking shall be provided on-site.
8. Cross access easements and drive aisles shall be provided throughout the PUD.
9. Drive aisles shall allow for complete circulation within the PUD, with sufficient width for emergency vehicles, and shall not include dead end drive aisles.
10. PUD driveways shall align with those across the street.
11. Drive aisles shall align and be situated perpendicular to the main building frontage.

12. Adequate auto stack-up areas shall be designed to permit a minimum of two cars to enter the parking lot area without obstructing either street through traffic or vehicle backup areas within the parking lot.
13. The number of curb cuts connecting the site with collector or arterial streets shall be minimized.
14. Mutual access easements and mutual driveways are strongly encouraged, to minimize paved areas and curb cuts.
15. A minimum of 5-foot wide walkways or landscape areas should be provided around structures and architectural features, particularly those located adjacent to vehicular drive aisles, in order to allow for visibility to and the safety of pedestrians entering structures and walking into or near drive aisles.
16. Access to the property and circulation thereon shall be safe and convenient for pedestrians, cyclists, and vehicles. Vertical and horizontal sight lines shall be sufficient to ensure safe vehicular and pedestrian movements.

#### Landscaping and Open Space

1. Design criteria for landscaping shall be consistent throughout the PUD. Each development within the PUD shall follow the requirements contained herein when preparing their landscaping plans. Additional landscaping design criteria is available from the City of Morgan Hill, Planning Division.
2. The nature, amount and arrangement of open space should be carefully planned to complement the planned placements, functions and designs of structures, with consideration given to possible public/quasi-public use of the open space areas for seating, waiting areas, and so forth.
3. Landscaping should be carefully planned to complement the designs of the buildings, to add color and interest, and to be sustainable for the development. The entrance to the PUD is to be well-landscaped and serve as a focal point, and attractive front landscaped setbacks along public street frontages are also particularly important.
4. The general characteristics of the plant palette for the PUD should reflect a combination of year-round color and textural interest. Plants should be selected on the basis of color combinations, growth patterns, low maintenance and water conservation characteristics. At time of installation, the tree sizes shall be a minimum of 15 gallon, and 24-inch box material may be required by the ARB for certain projects or locations.
5. At time of installation, all shrub planting should be a minimum of 5-gallon size, or as approved through architectural and site review. Along the project frontage(s), minimum 15-gallon containers are strongly encouraged to facilitate earlier and stronger establishment of landscaping. Planned minimum shrub height should be three feet, or as

approved by architectural and site review.

6. All street trees and trees planted within the front setback areas should be a minimum of 24-inch box size, or as approved by architectural and site review. Where applicable, street trees are to be consistent with the City Morgan Hill Master Street Tree program.
7. Landscaping shall be placed adjacent to a minimum of 50 percent of a building's perimeter.
8. Landscaping at the entrance of a building shall include box size and/or accent trees to create a focal point to help direct people to the building entrance.
9. Native oaks and fieldstones should be strongly considered for incorporation into the landscape plan.
10. A minimum of 15 percent of all required parking areas shall be landscaped. Required setback and perimeter planting areas shall not be counted in this area, but may include the building perimeter landscaping.
11. A canopy like tree shall be planted in the parking lot planter islands to produce shade.
12. Landscaping shall be compatible with, and complement the site planning, as well as the architecture of the building. Plantings in parking lots shall help soften and visually tie the buildings to landscaping.
13. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.
14. The developer shall be required to follow the landscape design criteria, which is available from the City of Morgan Hill, Community Development Department. A landscape buffer shall be established, as required, to provide screening and noise abatement from the highway.
15. All parking areas shall be screened from view of public streets by use of berming or masonry walls of a minimum three-foot effective height.
16. Proper trimming and pruning of trees within the PUD will be monitored by the City of Morgan Hill. The improper "Topping" of trees will be prohibited.
17. Any future alterations or modifications of the landscaping within the d PUD shall be reviewed and approved by the Architectural Review Board.
18. Landscaping and berming within the 30-foot Condit Road frontage shall be designed so as to mitigate noise generated on site.

### Signage/Displays

1. A uniform sign program identifying locations of signs both on- and off-site shall be prepared for review and approval of the Community Development Department, as part of the Architectural and Site Review for each proposed development or structure.
2. PUD freeway signage shall utilize a single freeway sign consistent with the provisions of the City sign ordinance.
3. Monument freestanding signs should be proposed only for those uses located adjacent to the Condit Road frontage, in compliance with the City of Morgan Hill Planning and Zoning Codes, Section 18.76.250.
4. Address numbers shall contrast with their background, and shall be six inches in height. Address numbers should also occur on the monument sign.
5. Any flag poles installed on-site shall not exceed 30 feet in height.

### Lighting

1. The design of the exterior building lighting and parking lot lighting fixtures shall be compatible with the architecture to be used in the development.
2. As part of the site and architectural review process, a photometric study shall be conducted to evaluate on-site lighting. The photometric study shall identify appropriate lighting levels to minimize light and glare impacts on adjacent properties. The photometric study shall be reviewed and approved by the Architectural Review Board.
3. Lighting for pedestrian pathways shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
4. All lighting shall be shielded and directed in such a manner so as not to produce harmful effects upon neighboring property.
5. The lighting for all of the uses within the PUD shall be subject to review and approval of the Community Development Director. Adjustments to the lighting intensity may be requested after commencement of the use.

### Utilities and Safety Features

1. There shall be shared use storm water detention facilities. Location and method of storm water mitigation shall be reviewed and approved as part of the Architectural and Site Review process.
2. A maximum of one detention pond, or one interlinked detention pond system with one outfall into the Madrone Channel, shall be used to serve the entire development. The

detention pond shall not be located within any setback area and shall not be visible from any public street.

3. All backflow devices, fire risers and check valves shall be screened with landscaping.
4. All future development applications shall be subject to review and condition of the appropriate utility and public service providers for the City of Morgan Hill.
5. No utility equipment shall be located within the front setback area unless placed within an underground vault. All transformers shall be located interior to the site, outside of the front setback area, and shall be screened with landscape material.
6. Approved numbers or addresses are to be placed on all new buildings in such a position as to be plainly visible and legible from the street or road fronting the property.
7. All buildings shall be protected by an approved automatic fire sprinkler system, per City of Morgan Hill Ordinance.

#### Noise

1. Uses within the PUD shall not use any exterior public address systems or other noise intrusive communication systems.

#### Easements

1. Easements for the installation and maintenance of utilities, walkways, future roads and drainage facilities, and shared driveways will be recorded as part of any subdivision map or lot line adjustment. Other easements, such as paved parking, will be recorded as an offer of easement if secondary users are unknown.

#### General Provisions

1. Any modification to these PUD Guidelines shall be subject to review and approval of a PUD Guidelines Amendment.





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **ZONING AMENDMENT, ZA-05-06: CITY OF MORGAN HILL - MAST STREET PUD DISTRICT AMENDMENT**

#### **RECOMMENDED ACTIONS:**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**EXECUTIVE SUMMARY:** Staff is requesting approval of a planned unit development (PUD) for a 2.94-acre parcel located at the northwest corner of Mast Street and Railroad Avenue. The purpose of the PUD is to make concrete batching plants a permitted use on the subject site and to allow silos up to seventy feet in height.

Staff has applied for this zoning amendment on behalf of Associated Concrete in order to facilitate the relocation of their existing facility from the downtown area to an industrial district. The relocation will allow residential development in downtown and eliminate a use that is not compatible with a downtown environment.

On August 9, 2005, the Planning Commission reviewed and recommended approval of the proposed PUD, with modifications. The PUD originally included a performance standard that restricted truck traffic to non-residential streets. The Planning Commission revised the PUD to allow trucks to travel on residential streets for residential deliveries, and made the determination that the segment of Church Street between Mast Street and San Pedro Avenue would not be considered a residential street for the purposes of the PUD. The list of permitted and conditional uses was also simplified to make reference to those uses listed in the City's MG, General Industrial Zoning District, with the exception of a concrete batching plant which is identified as a permitted use in the PUD.

The item was advertised for the September 21 Council meeting, whereby the Council opened the public hearing to receive comments from the public. However, the Council took no action on the item due to a noticing error from the previous August 9 Commission meeting. The item was required to go back to the Commission for formal action, and was duly noticed for the October 11 Planning Commission meeting. At the October 11 meeting two individuals spoke in opposition to the project, citing their concerns that concrete batch plants are not an appropriate use for the proposed site. The Commission considered the public comments, and unanimously recommended approval of the zoning amendment request as presented.

For the Council's reference, copies of the August 9 Planning Commission minutes and September 21 City Council draft minutes are attached.

**FISCAL IMPACT:** No budget adjustment required.

**Agenda Item # 23**

**Prepared By:**

**Senior Planner**

**Approved By:**

**CDD Director**

**Submitted By:**

**City Manager**

**ORDINANCE NO. , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PLANNED UNIT DEVELOPMENT (PUD) FOR A 2.94-ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF MAST STREET AND RAILROAD AVENUE TO ALLOW CONCRETE BATCHING PLANTS AS A PERMITTED USE IN THE PUD AND SILOS UP TO 70 FEET IN HEIGHT (APN 817-02-064) (ZA-05-06: CITY OF MORGAN HILL – MAST STREET PUD DISTRICT AMENDMENT)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** This action is categorically exempt from environmental review under Section 15305 of the State CEQA Guidelines.
- SECTION 4.** The City Council hereby approves the PUD and PUD provisions for the 2.94-acre site, as contained in the attached Exhibit “A.”
- SECTION 5.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 6.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of November 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of November 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## **EXHIBIT A**

### **199 MAST STREET PLANNED UNIT DEVELOPMENT**

#### **Area**

The PUD area is shown on the attached map and consists of Assessor Parcel Number 817-02-064.

#### **Objective**

This PUD will facilitate the development of a concrete batch plant and other industrial uses as specified below at the subject site.

#### **Allowable Uses**

##### **Permitted**

The following uses shall be permitted in the PUD:

- All permitted uses in the MG zoning district; and
- Concrete batching plants;

##### **Conditional**

The following uses may be conditionally allowed in the PUD, subject to issuance of a conditional use permit in accordance with Chapter 18.54 of the Morgan Hill Municipal Code:

- All uses conditionally permitted in the MG zoning district, except that concrete batching plants shall be a permitted use.

#### **Development Standards**

Future development of the PUD area shall comply with the site development standards of the MG, General Industrial Zoning District in effect at time of application, with the following exceptions:

1. Concrete batch plant silos are allowed to be constructed up to a maximum height of 70 feet. All other structures shall comply with the maximum height standard for the MG, General Industrial District.
2. A dust management plan shall be submitted by the project proponent of any proposed concrete batch plant for review and approval by the City of Morgan Hill.
3. Truck traffic related to any proposed concrete batch plant shall be generally restricted to non-residential streets for commercial deliveries. Use of residential streets shall be permitted for residential deliveries. For the purposes of this performance standard, the segment of Church Street between Mast Street and San Pedro Avenue is not considered a residential street.



## CITY COUNCIL STAFF REPORT

**MEETING DATE:** October 19, 2005

### **DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-07: MONTEREY-SO. COUNTY HOUSING (ROYAL COURT)**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**EXECUTIVE SUMMARY:** The applicant is requesting to amend the development agreement for a multi-family affordable housing project to allow up to a 10-month extension of time for 54, Fiscal Year 2005-06 allotments. The 54 units are part of a larger project referred to as Royal Court, which is located between Monterey Road and Del Monte Avenue, north of Wright Avenue. The Royal Court project consists of 67 units: 12 for-sale townhomes, 54 apartments, and one manager's unit. Although the project contains a total of 67 units, 13 are considered replacement units. Therefore, only the 54 apartments are subject to the development agreement.

The applicant is requesting to amend the Development Schedule (Exhibit B) of the project development agreement to extend various development deadlines as follows: two months to submit a Final Map, 10 months to submit and obtain building permits, and one month to commence construction of the 54 units (refer to the attached September 27 Commission staff report for a detailed table). As explained in the applicant's Letter of Request (attached for the Council's reference), the project has been delayed due to floodplain issues. The project site is located within a flood hazard area. Consequently, South County Housing has had to resolve grading and design issues with the Santa Clara Valley Water District (SCVWD) and the City of Morgan Hill.

Under Section 18.78.125.G of the Municipal Code, the City may grant an extension of time, or Exception to Loss of Building Allotment (ELBA) if it finds that *"the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental reviews, permit delays not the result of developer inaction, or allocation appeals processing."*

On September 27, 2005, the Planning Commission reviewed the proposed extension of time, and unanimously recommended approval (with one member absent) of the applicant's request, with modifications. The applicant applied for building permits earlier that day; therefore, the deadline to submit for building permits was revised to September 30, 2005. The deadline to obtain building permits was also revised from July 1, 2006 (as originally requested by the applicant) to April 30, 2006, given the applicant was able to submit for building permits sooner than anticipated. Lastly, the Commission did not recommend approval to extend the 'commence construction' deadline by one month. The applicant was agreeable to all the changes, as they anticipated obtaining building permits in the spring and commencing construction by June 30, 2006. For the Council's reference, copies of the September 27 Commission staff report and draft minutes are attached.

**FISCAL IMPACT:** No budget adjustment required.

Agenda Item #24

Prepared By:

Senior Planner

Approved By:

CDD Director

Submitted By:

City Manager

## **ORDINANCE NO.**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1707, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-04-02: MONTEREY – SOUTH COUNTY HOUSING (ROYAL COURT) (APNs 764-12-008, -009, -018, & -019) (DAA-04-07: MONTEREY – SOUTH COUNTY HOUSING (ROYAL COURT))**

#### **THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 04-41, adopted April 13, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-04-02: Monterey – South County Housing (Royal Court)	54 units (Fiscal Year 2005-06)

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8. Effective Date Publication.** This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 9. MODIFICATION TO DEVELOPMENT SCHEDULE.** The Council hereby approves an amendment to the development schedule for the Royal Court project, as attached in Exhibit A, and by this reference incorporated herein.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of November 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of November 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT A**

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**FY 2005-06 DEVELOPMENT SCHEDULE  
MP-04-02: MONTEREY – SOUTH COUNTY HOUSING**

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**I. SUBDIVISION AND ZONING APPLICATIONS**

Applications Filed: September 13, 2004

**II. SITE REVIEW APPLICATION**

Application Filed: September 13, 2004

**III. FINAL MAP SUBMITTAL**

Map, Improvements Agreement and Bonds: ~~February 28, 2005~~ *April 29, 2005*

**IV. BUILDING PERMIT SUBMITTAL**

Submit plans to Building Division for plan check: ~~July 1, 2005~~ *September 30, 2005*

**V. BUILDING PERMITS**

Obtain Building Permits: ~~September 13, 2005~~ *April 30, 2006*

Commence Construction: June 30, 2006

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 28 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.





## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **APPLICATION ZA-05-08: AMENDING THE ZONING CODE LOT DEFINITION AND PARKING CODE STANDARD ON TANDEM PARKING**

#### **RECOMMENDED ACTION(S):**

1. Open/close the Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**Agenda Item # 25**

**Prepared By:**

**Planning Manager**

**Approved/  
Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

To accommodate the new higher density residential development in the R-4 zoning district and the higher density on the opportunity sites in the downtown, staff is recommending the lot definition under Section 18.04.245 of the Municipal Code be amended to remove the requirement that a lot of record for a townhouse development must have frontage to a public street. This exception would apply in the R-4 and CC/R districts. The proposed amendment will allow townhouse lots to be created in the interior portions of the project site that is bordered by public streets. Developers would then be able to access townhouse lots through interior private streets or circulation aisles. This would have the desirable effect of minimizing the number of curb cuts on the public streets and creating a more attractive pedestrian environment. The current requirement makes it difficult to achieve the minimum density required in the R-4 and CC/R districts and precludes development of ownership units at the higher density desired in the downtown. The Planning Commission recommends this exception also apply to townhouse developments in the R-2 and R-3 residential zoning districts.

Staff is also recommending that Section 18.50.200 of the Municipal Code be amended. This amendment would allow tandem parking for required parking spaces in the R-2, R-3, R-4 and CC/R districts. A tandem configuration (one car behind the other) is often provided in higher density developments to save space and allow for a more efficient floor plan. The City's Parking Code currently does not allow tandem parking for the required parking spaces. While the housing market may still dictate a traditional side by side parking configuration in a townhouse development, this amendment would allow the option of reducing the garage door elevation visible to the street, and will also allow the opportunity to achieve higher densities desired in new downtown developments. The Planning Commission, voted 4-2 at their September 27, 2005 meeting to recommend approval of the above zoning text amendment. Commissioners Davenport and Mueller opposed the recommendation. Both opposed extending the tandem parking allowance to the R-2 and R-3 districts, believing that it is not necessary or desirable to use tandem parking in these lower density (R-2 and R-3) multi-family districts. The attached Planning Commission report and meeting minutes provide additional background information.

#### **FISCAL IMPACT:**

No budget adjustment required

EXHIBIT "A"

ORDINANCE NO. \_\_\_\_\_, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.04.245 OF THE MORGAN HILL MUNICIPAL CODE, ELIMINATING THE STREET FRONTAGE REQUIREMENT TO THE LOT DEFINITION, AND AMENDING SECTION 18.050.200, ELIMINATING THE RESTRICTION ON TANDEM PARKING FOR REQUIRED PARKING SPACES IN THE R-2, R-3, R-4 AND CC/R ZONING DISTRICTS.**

**WHEREAS**, the zoning definition of a "lot" is contained in Title 18, Section 18.04.245 of the Morgan Hill Municipal Code; and

**WHEREAS**, the aforementioned code section defines a lot, among other attributes, as having frontage on an approved public or private street; and

**WHEREAS**, the requirement to maintain frontage to a street precludes development of townhouse lots in developments at the higher density desired in the downtown; and,

**WHEREAS**, Section 18.50.200 of the Morgan Hill Municipal Code defines tandem parking and imposes a restriction on the use of such parking for required parking spaces; and

**WHEREAS**, tandem parking is necessary in higher density residential developments to save space and allow for a more efficient floor plan; and

**WHEREAS**, testimony and exhibits received at a noticed public hearing having been duly considered,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 18.04.245 of the Morgan Hill Municipal Code is amended to read as follows:

**Section 18.04.245 Lot.**

"Lot" means a piece or parcel of land owned as a single unit in common ownership, occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as are required by this chapter, and having frontage on and access to an approved and accepted city street which meets the standards of width and improvements as specified in the regulations of the city contained in or adopted pursuant to the subdivision title of this code, and Chapter 18.50 of this title on street improvements as to the frontage of the lot involved, or having frontage on and access to an approved private street *or circulation aisle for properties that are located in the R-2, R-3, R-4 and CC-R districts.* (Ord. 559 § A (part), 1981)

**SECTION 2** Section 18.50.200 of the Morgan Hill Municipal Code is amended to read as follows:

**Section 18.50.200 Tandem parking spaces.**

Tandem parking spaces will not be acceptable as required spaces *except in the R-2, R-3, R-4 and CC/R districts and only in an enclosed garage*. A "tandem parking space" is a parking space so located that it is necessary to move one or more other vehicles in order to allow the vehicle occupying the tandem space to gain access to or from such space. (Ord. 1415 N.S. § 30, 1998; Ord. 559 N.S. § A (part), 1981)

**SECTION 3** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 4** Effective Date; Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of November 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**           **COUNCIL MEMBERS:**  
**ABSTAIN:**       **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of November 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **ZONING AMENDMENT, ZA-05-11: CITY OF MORGAN HILL. ESTABLISHING PROVISIONS FOR DOWNTOWN ADMINISTRATIVE USE PERMITS**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance
4. Provide Direction on further ordinance amendments

**Agenda Item # 26**

**Prepared By:**

**Planning Manager**

**Approved/  
Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** Staff is requesting an amendment to Chapter 18.54 of the Municipal Code establishing an administrative use permit process to allow ground floor office and personal service uses on Monterey Road and East Third Street in the Central Commercial/Residential (CC/R) zoning district. Earlier this year, the City Council amended the CC/R district to restrict ground floor non-retail uses on Monterey Road and Third Street in accordance with the recommendations in the Downtown Plan. Such uses could locate on the ground floor in these areas subject to Planning Commission approval of Conditional Use Permit (CUP). Since the code changes went into effect, property owners and potential office and personal service tenants have expressed frustration at the time and expense required to comply with the CUP requirement for certain buildings and locations downtown. On September 7, the Council received public comment from a property owner who owns an office building on Monterey Road. The building is not designed for retail use and the owner indicated the \$4,601 CUP fee discourages new tenants from locating in the building.

Prior to the testimony received from the above office building owner, the Planning Commission agreed with a staff suggestion to explore a different process for evaluating proposed ground floor office and personal service uses along Monterey Road and Third Street in the downtown area. The proposed process is to create a Downtown Administrative Use Permit (DAUP). The proposed draft ordinance is attached. The process is modeled after the Minor Exception procedure, in that there is review by city departments as necessary and public notice to property owners, prior to action on the permit application by the Community Development Director. The attached Planning Commission report provides additional information on the DAUP process. The recommended fee for a DAUP is \$782.

The Planning Commission reviewed the DAUP Ordinance at their September 27, 2006 meeting. The Commission voted 6-0-1 to recommend approval with a modification allowing the Community Development Director authority to waive any or the entire DAUP filing requirement for uses within existing buildings.

On October 7, 2005, staff met with representatives of the Morgan Hill Downtown Association (MHDA) to receive comment on the Draft DAUP Ordinance. The MHDA supports adoption of the Ordinance and also recommends that additional provisions be added. Those include limiting the ground floor restriction to the immediate downtown area (Main to Dunne and Third Street); imposing a time limit on DAUP's to 3 years; allow DAUP's only when the retail vacancy rate exceeds 5%; and exclude buildings in the immediate downtown area that are not designed for retail (banks and office buildings). In order to not delay the DAUP process, staff recommends the current ordinance be adopted and that staff and the Planning Commission be directed to review and consider the MHDA recommendations as an amendment to the DAUP Ordinance.

**FISCAL IMPACT:** No budget adjustment required

**EXHIBIT “A”**

**ORDINANCE NO. , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING ARTICLE IV TO CHAPTER 18.54 (CONDITIONAL AND TEMPORARY USE PERMITS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, TO ESTABLISH PROVISIONS FOR DOWNTOWN ADMINISTRATIVE USE PERMITS, AND AMENDING SECTION 18.24.030 TO ALLOW FOR ISSUANCE OF SUCH FOR GROUND FLOOR OFFICE AND PERSONAL SERVICE USES LOCATED ALONG MONTEREY ROAD AND THIRD STREET**

**ZA-05-11**

WHEREAS, a Downtown Area Plan has been prepared by the City of Morgan Hill, and in order to implement provisions of the Downtown Area Plan, certain zoning ordinance amendments have been adopted by the City Council of the City of Morgan Hill, including amendments to the CC-R Central Commercial/Residential District; and

WHEREAS, due to a desire to encourage ground floor retail uses in the Downtown Area, a CC-R zoning ordinance amendment was adopted which required that office, personal service, and other non-retail uses proposed for downtown ground floor locations obtain a Conditional Use Permit prior to establishment; and,

WHEREAS, a Mitigated Negative Declaration has been adopted and filed for a defined level of future residential, mixed use and non-residential development in the Downtown Area; and

WHEREAS, most office and personal service business uses proposing to establish within downtown area non-residential buildings do not involve the potential for environmental impacts to any higher degree than retail uses; and imposition of applicable mitigation measures from the Negative Declaration that has already been filed for the Downtown Area would be expected to be adequate for most retail, office and personal service uses proposing to locate Downtown; and

WHEREAS, while the City Council of the City of Morgan Hill does wish to encourage retail uses to locate within the ground floor of structures located in the downtown area, the Council also recognizes that certain buildings may not be appropriate for retail uses in terms of design, location and/or other factors; and that the market may not be sufficiently strong to allow for all ground floor space to be put to retail use, and having vacant ground floor space is not beneficial for the Downtown Area.

WHEREAS, due to the fact that most uses locating downtown will not need additional CEQA review, and that offices and personal service uses locating within existing or approved downtown buildings do not typically involve a need for detailed staff review, complex analysis, and structuring of conditions of approval; it is appropriate to reduce the level of review and fee required for proposed ground floor office and personal service uses in the Downtown Area; and

WHEREAS, upon submission by the applicant of sufficient information regarding unfruitful retail recruitment efforts and/or upon city staff site visit and determination that a ground floor space is not generally suitable for retail use, the City Council believes that an administrative use permit process with action by the Community Development Director will adequately balance the city's objective for retail uses with the reality that either a building is not appropriately designed and/or located; and/or the retail market is not sufficiently strong to accommodate a retail use, and therefore that ground floor office or personal service uses may be allowed; and

WHEREAS, adoption of this ordinance to allow for Administrative Use Permits rather than Conditional Use Permits for office and personal service uses located along Monterey Road and Third Street in the downtown area is categorically exempt under Class 15305, Minor Alterations in Land Use Limitations.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. CC-R Central Commercial/Residential District. Section 18.24.030 (Conditional Uses for first floor locations on parcels fronting on Monterey Road or Third Street) of Title 18 (Zoning) is hereby amended to read as follows:

18.24.030 Conditional Use Permit and Downtown Administrative Use Permit for uses for first floor locations on parcels fronting on Monterey Road or Third Street.

The following uses may be conditionally allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Residential units;
- B. Convenience Markets/Stores;
- C. Drive-in Establishments;
- D. Commercial Indoor Recreation.

The following uses may be allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a Downtown Administrative Use Permit in accordance with Article IV of Chapter 18.54 of this title:

- A. Commercial, Professional and Medical Office uses;
- B. Personal Services

Section 2. Downtown Administrative Use Permit. Article IV of Chapter 18.54 of Title 18 (Zoning) is hereby amended to add the following section:

Article IV. Downtown Administrative Use Permits

- 18.54.240 Purpose of permits.
- 18.54.250 Application—Contents.
- 18.54.260 Application Process.
- 18.54.270 Evaluation, Conditions and Findings.

**18.54.240 Purpose of permits.** The purpose of Downtown Administrative Use Permits is to allow for Commercial, Professional and Medical Office uses, and Personal Services uses, to locate in first floor locations on parcels that front Monterey Road or Third Street, upon a determination that a building is not appropriately designed and/or located, and/or the retail market is not sufficiently strong, to accommodate a retail use, and therefore that ground floor office or personal service uses may be allowed.

**18.54.250 Application—Contents.** An application for a Downtown Administrative Use Permit (DAUP) shall be made by the property owner or agent thereof, on a form issued by the Community Development Department. An application shall be accompanied by the following information *except as may be waived by the Community Development Director for proposed uses in existing structures*:

- A. Vicinity map;
- B. Site plan;
- C. Floor plan;
- D. Building elevations for facades along Monterey Avenue and Third Street;
- E. Signing and landscape plan;
- F. Statement of proposed operations, including but not limited to number of employees and proposed hours of operation.
- H. Either one or both of the following:
  - i. A statement that the building is not designed and/or located appropriately to accommodate retail use(s); or
  - ii. Materials which demonstrate that the subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates.
- I. Other materials as required by the Community Development Department.

**18.54.260 Application Process.**

- A. An application for a Downtown Administrative Use Permit shall be filed with the Community Development Department, in a form prescribed by the Community Development Director. After an application is deemed complete by the Community Development Department, such application shall be routed to affected City departments for comments.

- B. The Department shall notify by mail the applicant and owners of property located within 300 feet of the proposed site of the proposed use and application for a Downtown Administrative Use Permit, at least ten days prior to the scheduled date for decision by the Department, in order to receive comments. The Department should also notify the Chamber of Commerce and other organizations with a known interest in Downtown Morgan Hill.
- C. After the notice period has occurred and comments have been considered, the Community Development Director will take action on the DAUP. Appeals of the decision of the Community Development Department shall be filed within 10 days, and appeals shall be considered by the Planning Commission at a noticed public hearing. Appeals of the decision of the Planning Commission shall be filed within 10 days, and appeals shall be considered by the City Council at a noticed public hearing. The decision of the City Council shall be final.

**18.54.270 Evaluation, Conditions and Findings.**

Evaluation. The Community Development Director or designee shall evaluate the application for consistency with the following criteria:

- 1. The suitability of the site and building for the proposed use;
- 2. The impact of the use on the surrounding properties, and on the CC-R District in general.
- 3. The impact of the use on traffic circulation and planned capacity of the street system.
- 4. The compatibility of the use and design with adjacent uses within the district and its surroundings;
- 5. Whether the use will adversely affect the peace, health, safety, morals or welfare of persons residing or working in the vicinity of the use;
- 6. Whether the use will impair the utility or value of property of other persons located in the vicinity of the site;
- 7. The applicability and conformity of the use with provisions of Chapter 8.40, hazardous materials, as existing or hereafter amended;
- 8. Review of the building with regard to suitability of design and location for accommodation of first floor retail use(s);
- 9. Review of materials submitted by the applicant and determination that the subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates;
- 10. Whether the use will provide a public benefit to the City and its citizens.

Conditions. The Community Development Director may impose reasonable conditions on an approval of a Downtown Administrative Use Permit. Conditions may include, but shall not be limited to, conditions requiring a review of the use at some future time or upon certain triggering event(s); conditions providing for expiration of the Administrative Use Permit at some future time or upon certain triggering event(s); conditions imposing requirements for site maintenance and/or improvements; conditions requiring installation and maintenance of landscaping, regulation of vehicular ingress and egress, traffic circulation, regulation of signs, establishment of development



schedules or time limits for performance or completion, and/or any other conditions as deemed necessary by the Community Development Director.

Findings. Approval of and issuance of the Downtown Administrative Use Permit shall be subject to the Community Development Director making one or more of the following findings:

1. The building is not designed and/or located appropriately to accommodate retail use(s); and/or
2. The subject space in the building has been advertised for lease to retail tenants for at least 90 days, but the owner has been unable to locate a suitable retail tenant at market rates.

**Section 3.** **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 4.** **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19<sup>th</sup> Day of October 2005, and was finally adopted at a regular meeting of said Council on the Day of November 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**   **COUNCIL MEMBERS:**  
**ABSENT:**      **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

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**Irma Torrez, City Clerk**

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**Dennis Kennedy, Mayor**

∞ **CERTIFICATE OF THE CITY CLERK** ∞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,**  
do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted  
by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of  
November 2005.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *October 19, 2005*

### **REQUEST FOR ENDORSEMENT OF PROPOSITION 77, REDISTRICTING INITIATIVE CONSTITUTIONAL AMENDMENT**

**RECOMMENDED ACTION(S):** Consider Request for  
Endorsement of Proposition 77

**Agenda Item #27**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

### **EXECUTIVE SUMMARY:**

A request has been received from Alberto Llamas, Field Representative for *Fair Districts Now*, and Mark Abernathy requesting the City endorse "The Voter Empowerment Act." This act endorses Proposition 77, the Redistricting Reform Initiative that has qualified and will be voted upon by voters in the State of California's November 8, 2005 election.

This request has been referred to the Regional Planning & Transportation Committee and is scheduled to be discussed by this Committee on Friday, October 14, 2005. Staff and/or Committee members will present a report to the Council on the Committee's recommendation on a City position as it relates to Proposition 77.

Staff has attached information relating to Proposition 77, including a non partisan analysis from the League of Women Voters of California.

**FISCAL IMPACT:** No budget adjustment required.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: SEPTEMBER 21, 2005***

**Agenda Item #28**

**Prepared By:**

**Council Services &  
Records Manager**

**Submitted By:**

**City Manager**

### **Consider Proposed Text Amendments to Title 2, Administration and Personnel, of the Morgan Hill Municipal Code**

#### **RECOMMENDED ACTION(S):**

1. Consider proposed text amendments to Title 2, Chapters 2.22 (Master Provisions for Boards & Commissions), 2.28 (Health Commission), 2.32 (Parks & Recreation Commission), 2.56 (Architectural & Site Review Board), 2.64 (Mobile Home Rent Commission, and 2.68 (Library, Culture & Arts Commission); and addition of Chapter 2.70 (Senior Advisory Commission) to the Morgan Hill Municipal Code;
2. Provide staff direction with any recommended changes to draft ordinance;
3. Request comments from the affected commissions; and
4. Direct staff to return with an ordinance, incorporating amendments to the Municipal Code as it relates to Council appointed Boards & Commissions

#### **EXECUTIVE SUMMARY:**

In prior meetings, the City Council and staff discussed the difficulties experienced in recruiting to fill vacancies on boards and commissions. The City Council concluded 2005 interviews and appointments to various City Council boards and commissions. The Council discussed the fact that individuals not appointed to their choice of board or commissions could fill vacancies in other boards and commissions, based on qualifications and experience. Further, a number of incumbents tend to seek reappointment to various boards and commissions.

To address the ability to fill vacancies on boards, and commissions, staff requests that the Council consider amendments to Chapter 2.22 (Master Provisions for Boards & Commissions), 2.28 (Health Commission), 2.32 (Parks & Recreation Commission), 2.56 (Architectural & Site Review Board), and 2.68 (Library, Culture & Arts Commission); and the addition of Chapter 2.70 (Senior Advisory Committee) of the Morgan Hill Municipal Code. The proposed amendments are identified in Exhibit A, attached.

A consideration before the Council is whether it wishes to extend the terms of office for the various boards and commissions from two years to four years similar to that of the Planning Commission. Conducting recruitments and interviews during the same period as the Planning Commission would allow Council flexibility in appointing to fill vacancies on various boards and commission when there are more qualified individuals seeking appointment to a particular board or commission than there are vacancies. Should the Council agree to recruit, interview and appoint to fill vacancies on the various boards and commission on the same cycle as that of the Planning Commission, staff would recommend that recruitment efforts commence in March of odd years. (See attached Table 1 for current terms).

Earlier, this year, the Council accepted City Manager's recommendation that the Library Commission's charge be expanded to include "culture & arts." Staff offers Section 2.68.040, Powers and Duties, for Council consideration.

The Council, at its meeting of September 7, 2005, considered a request from the Senior Advisory Committee that it be allowed to report directly to the City Council instead of the Parks & Recreation Commission. The Council directed staff to prepare changes to the Municipal Code to change the Senior Advisory Committee to a Senior Advisory Commission such that the Senior Advisory Committee will have direct reporting to the Council. Staff offers Section 2.70, Senior Advisory Commission, for Council consideration.

**FISCAL IMPACT:** There would be minimal staffing impacts associated with having the Senior Advisory Commission reporting directly to the Council. Should the Council extend the terms of appointments from two to four years, it would result in cost savings in terms of recruitment efforts.

## EXHIBIT “A”

### **Title 2 – Administration and Personnel**

This Section is to be amended to reflect that Chapter 2.68 is to read: Library, Culture & Arts Commission and to add Chapter 2.70, Senior Advisory Commission.

### **Chapter 2.22 – Master Provisions for Boards and Commissions**

Chapter 2.22.010 – Establishment of Boards and Commissions, subsection A, amended to include a Senior Advisory Commission.

### **Chapter 2.28 – Health Commission**

This Commission has not existed for several years. Does the Council wish to continue with this Commission? If so, shall staff commence with the recruitment process. If not, this section of the Municipal Code should be deleted.

### **Chapter 2.32 – Parks & Recreation Commission**

Staff has not experience difficulties in recruiting to fill vacancies on this Commission. Unless the Council has other amendments to Chapter 2.32, staff would recommend that the terms for commissioners appointed to this commission be extended from two to four years. Should the Council concur, staff recommends that Chapter 2.32.020B be modified accordingly.

The Council expanded the role of the Library Commission to include culture and arts. As “culture” is now the charge of the Library, Culture & Arts commission, staff recommends that section 2.32.040 A, under the Parks & Recreation Commission’s Powers and Duties, be amended to delete reference to cultural facilities; both in holding hearings and review of capital expenditures.

As the Council has supported the Senior Advisory Committee’s request that it be allowed to report directly to the City Council, Section 2.32.040 F, under the Parks & Recreation Powers & Duties, the establishment of a senior advisory committee should be removed from this section.

### **Chapter 2.56 – Architectural and Site Review Board**

In order to assist recruitment efforts to fill for this Board, staff recommends that Chapter 2.56.030A be amended to read as follows:

#### 2.56.030

A. The city ARB shall consist of five members, four of whom shall reside within the city limits and one of whom may reside outside the city limits, but within the city’s sphere of influence. Three ~~M~~members of the ARB must represent one of the following professions or areas of expertise: ~~one~~ registered architect or design professional in a related field selected by the city council; ~~one~~ landscape architecture (or horticulturist); a licensed general contractor (or a similarly qualified individual representing the construction industry); and two other ~~persons~~ members with experience in city planning, graphic design or a broad knowledge of plant material, building design or of other physical design professions associated with the development process.

On few occasions, staff has received interest from design professionals wishing to be considered for this Board. These individuals work within the City limits, but reside outside the City’s sphere of influence. Staff would like to know if the Council would consider these design professionals in light of the

difficulty in recruiting to fill vacancies on this particular board.

### **Chapter 2.64 – Mobile Home Rent Commission**

Should the Council support a four year term appointment, Chapter 2.64.010 D would need to be amended accordingly.

### **Chapter 2.68 – Library Commission**

Chapter 2.68 should be amended to reflect the extended title of this commission: Library, Culture and Arts Commission. The following are further recommended modifications:

#### Chapter 2.68.010 – Created

“There is established a new commission which is entitled “library, culture and arts commission” to serve in an advisory capacity to the city council.”

#### Chapter 2.68.020 – Membership—Term of office

The commission shall consist of ~~up to nine~~ seven members, at least ~~four~~ five of whom shall be residents and registered voters of the city of Morgan Hill. The mayor and city council may appoint up to ~~three~~ two members who reside in the unincorporated area of Santa Clara County and/or otherwise within Morgan Hill’s sphere of influence. Members shall not be officials or employees of the city, county library employees nor paid members of any organization receiving financial support from the city for library services.

A. Members are appointed by the mayor with the consent of the city council and serve at the pleasure of the city council. The term of office of the members of the commission shall be for two years and shall expire on April 1st or until their successors are appointed

B. Any member may be removed without cause, by a vote of any three members of the city council. If a vacancy occurs, other than by expiration of a term, it shall be filled by the mayor’s appointment for the unexpired portion of the term, with the approval of the city council. (Ord. 1559 N.S. § 1, 2002; Ord. 1407 N.S. § 5, 1998; Ord. 1382 N.S. § 1, 1998; Ord. 1374 N.S. § 1 (part), 1998)

Staff offers the following amendments to the powers and duties for the Library, Culture & Arts Commission:

#### **Section 2.68.040 Powers and duties.**

The powers and functions of the commission shall be as follows:

A. To advise act in an advisory capacity to the city council ~~on the adequacy of~~ in all matters pertaining to library, culture and arts ~~services to the people of the city~~ in the community;

B. To serve as a liaison between the city and the Santa Clara County library;

B. To consult with private community groups supportive of library, culture and art programs and serve as a liaison between such groups and the city;

C. To provide advice and recommendations regarding the adequacy of existing library facilities;

D. Look for opportunities for participation of artists and performers in City-sponsored activities, and ways to encourage community involvement in the arts;

**E. Work cooperatively with City boards and commissions and other public and private organizations in creating and promoting art and cultural programs and activities within the City;**

**F. Coordinate and strengthen existing organizations in the arts and develop cooperation with regional organizations;**

**G. Make recommendations to the City Council regarding the funding of community art projects, including the search for private and public grants, and regarding the disbursement of revenues consistent with the needs of the community;**

**H. Review and make recommendations to the City Council upon all works of art to be acquired by the City, either by purchase, gift or otherwise, and exterior works of art installed in the City on public property;**

**I. Recommend to the City Council the adoption of such ordinances or policies as it may deem necessary for the administration and preservation of the arts and cultural development of the City;**

**K.** To perform such other tasks as may be expressly requested of it by the city council;

**L.** To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and

**M.** To report its decisions and recommendations relating to the above matters, in writing to the city council. (Ord. 1374 N.S. § 1 (part), 1998)

Section 2.68.050 to be amended to include culture and arts to this commission.

#### **Section 2.68.050 Effect.**

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city council or city officers as defined by the laws of the state of California or by this municipal code. The city council declares that the public interest and convenience require the appointment of a library, **culture and arts** commission to act purely in an advisory capacity to the city council. (Ord. 1374 N.S. § 1 (part), 1998)

Should there be more than the recommended two members currently appointed to the Library Commission who reside outside the City limits, the commissioner(s) would be grandfathered until vacancies are replaced with residents residing within the City limits.

Staff offers the recommendation to add Chapter 2.70 to the Municipal Code relating to the Senior Advisory Commission:

### **Chapter 2.70** **Senior Advisory Commission**

#### **Sections:**

**2.70.010 Created.**

**2.70.020 Membership – Terms of office.**

**2.70.030 Meetings.**

**2.70.040 Powers of duties.**

**2.70.050 Effect.**

**2.70.010 Created**

**There is established a new commission which is entitled the “senior advisory commission” to serve in an advisory capacity to the city council.**

#### 2.70.020      Membership—Terms of Office

The Commission shall consist of seven members, who shall be chosen by the city council from a list of nominees or applicants.

A. Members are appointed by the mayor with the consent of the city council and serve at the pleasure of the city council. The term of office of the members of the commission shall be for two years or until their successors are appointed.

B. The first seven members appointed, shall be the current members serving on the senior advisory committee. Terms for four of the commissioners shall expire on August 2006 and the other three commissioners with terms expiring August 2007.

C. Any member may be removed, without cause, by a vote of any three members of the city council. If a vacancy occurs other than the expiration of a term, it shall be filled by the mayor's appointment for the unexpired portion of the term, with the approval of the city council.

#### 2.70.030      Meetings

A. The commission shall establish a regular place of meetings and shall hold at least one regular meeting each month.

B. The commission shall select from its members a chair and vice chair in accordance with adopted city council policy.

C. The commission may adopt from time to time, such rules and regulations for the transaction of its business, or rules of conduct, as may be necessary to properly exercise its functions. Such rules shall be subject to approval of the city council before becoming effective.

D. Special meetings may be called in the manner required by the laws of the state of California. Special meetings may be called at any time, by the chair or by four members of the commission, upon notice being given to all members of the commission and to all news media at least twenty-four hours in advance of the meetings as required by the laws of the state of California.

E. A majority of a quorum of members is required to approve a recommendation or any matter that is presented to the commission which requires a vote.

F. The commission shall keep an accurate record of all proceedings and transactions, and through the city manager or his/her designee shall render such reports to the city council, as may be required

#### 2.70.040      Powers and duties.

The powers and functions of the commission shall be as follows:

A. To hold hearings on matters pertaining to older adult issues within the community, including the senior center, senior programming, transportation, healthcare, and/or other related older adult issues.

B. To consider, formulate and propose fiscally prudent programs, activities, resources, plans and development designed to provide for, regulate, and direct future programming needs for older adult issues.

C. To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and

D. To report its decisions and recommendations relating to the above matters, in writing to the City Council.

#### 2.70.050      Effect

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city



**council or city officers as defined by the laws of the state of California or by this municipal code. The city council declares that the public interest and convenience require the appointment of a senior advisory commission to act purely in an advisory capacity to the city council.**

### **Other comments**

With this year's recruitment efforts to fill vacancies on boards and commission, the City Council adopted Fundamental Principals to the Recruitment, Interview and Appointment Process (attached). One thought that came from the Fundamental Principals was Council discussion about its expectations of Boards, Commission and Committee Members.

Staff would like further direction from the City Council regarding the timing of recruitment efforts. The Council typically conducts its goal setting sessions in January of each year. The Council could discuss the characteristics it is looking for and its expectations of boards and commissions at the January goal setting sessions. Staff would modify the board, commission and committee applications accordingly in February. Recruitment efforts to commence in March; interviews being scheduled in April; and the Mayor to make appointments in May, subject to Council ratification.

**TABLE 1****CURRENT TERMS FOR BOARD, COMMITTEES AND COMMISSIONS**

<b>Board, Committees and Commission</b>	<b>Length of Term</b>	<b>Term Expires</b>
Architectural and Site Review Board 5 members	2-years 3 terms expire 2006 2 terms expire 2007 (1 vacancy 2006)	June 1
Bicycle and Trails Advisory Committee 7 members	2-years 4 terms expire 2006 3 terms expire 2007 (1 vacancy 2007)	April 1
Library Commission 7 members	2-years 4 terms expire 2006 3 terms expire 2007 (1 vacancy 2007)	April 1
Mobile Home Rent 5 members	2-years 3 terms expire 2006 2 terms expire 2007	June 1
Parks & Recreation Commission 7 members	2-years 4 terms expire 2006 3 terms expire 2007	April 1
Planning Commission 7 members	4-years 4 terms expire 2007 3 terms expire 2009	June 1
Senior Advisory Committee (Commission) 7 members	2-years 4 terms expire 2006 3 terms expire 2007 (2 vacancies 2007)	August 1
Youth Advisory Committee 9 members	Annual	June 30